



भारत का राजपत्र The Gazette of India

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सं. 14] नई दिल्ली, शनिवार, अप्रैल 8, 1995/ चैत्र 18, 1917
No. 14] NEW DELHI, SATURDAY, APRIL 8, 1995/CHAITRA 18, 1917

इस भाग में मिले हुए संख्या दी जाती है जिससे कि यह अलग संकलन से होकर
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India
(other than the Ministry of Defence)

कामिक, लोक शिकायत तथा पेंशन मंत्रालय

(कामिक और प्रशिक्षण विभाग)

नई दिल्ली, 22 मार्च, 1995

का. आ. 927—राष्ट्रपति, संविधान के अनुच्छेद 316(1क) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए मध्य लोक सेवा आयोग के सदस्य वाइस एडमिरल (सेवा निवृत्त) जी. एम. हीरानन्दानी, को आयोग की अध्यक्षता श्रोमती आर. एम. वैथ्यू (खुबुली) की अनुपस्थिति में आयोग के अध्यक्ष के कार्यों के निर्वहन के लिए दिनांक 4 मार्च, 1995 (अपराह्न) से 12 अप्रैल, 1995 तक नियुक्त करते हैं।

[सं. 39019/12/92-स्था (ख)]

य. गो. परगंडे, निदेशक (ई)

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 22nd March, 1995

S.O. 927.—In exercise of the powers vested under article 316(1A) of the Constitution, the President is pleased to appoint Vice Admiral (Retd.) G. M. Hiranandani, Member,

Union Public Service Commission to perform the duties of the Office of the Chairman of the Commission with effect from the afternoon of the 4th March, 1995 till 12th April, 1995 during the absence of Smt. R. M. Bathew (Kharbuli), Chairman of the Commission, on leave.

[No. 39019/12/92-Estt. (B)]

Y. G. PARANDE, Director (S)

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(वैकिंग प्रभाग)

नई दिल्ली, 22 मार्च, 1995

का. आ. 928—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 5 के उपखण्ड (1), खण्ड 7 और खण्ड 8 के उपखण्ड (1) के साथ पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में, केन्द्रीय सरकार भारतीय, रिजर्व बैंक के साथ परामर्श करने के पश्चात्, एतद्वारा,

श्री राशिद जीलानी को 7 मार्च, 1995 से 6 मार्च, 2000 तक पंजाब नेशनल बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में पुनर्निर्भूषण करती है।

[एफ. नं. 9/39/94-बी-ओ -I]

के. के. मंगल, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 22nd March, 1995

S.O. 928.—In pursuance of sub clause (a) of clause 3 read with sub-clause (1) of clause 5 clause 7 and sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby reappoints Shri Rashid Jilani as the Chairman and Managing Director of the Punjab National Bank for the period from 7th March, 1995 and upto 6th March, 2000.

[F. No. 9/39/94-B.O.I]

K. K. MANGAL, Under Secy.

केन्द्रीय उत्तराखण्ड प्रशासनिक

नागपुर, 9 मार्च, 1995

का. आ. 929.—श्री एस. एन. इन्काने, अधीक्षक समूह "ख" केन्द्रीय उत्पाद शुल्क समालोचक, नागपुर निवृत्त आयु प्राप्त करने पर दिनांक 31-01-1995 को अपराह्न में शामकीय सेवा में निवृत्त हुए हैं।

[पं. सं. II (3) 2/94 स्था -I]

हरजिंदर सिंह, उप समालोचक (वार्मिंग एवं सतर्कता)

CUSTOMS & CENTRAL EXCISE COLLECTORATE

Nagpur, the 9th March, 1995

S.O. 929.—Shri S. N. Inkane, Superintendent Central Excise Group 'B' of Nagpur Collectorate having attained the age of superannuation retired from Government service on 31-1-95 in the afternoon.

[C. No. II(3)2/94/Estt. II]

HARJINDER SINGH, Dy. Collector (Per. & Vig.)

नागरिक, प्रति, उपभोक्ता मामले और

सार्वजनिक वितरण मंत्रालय

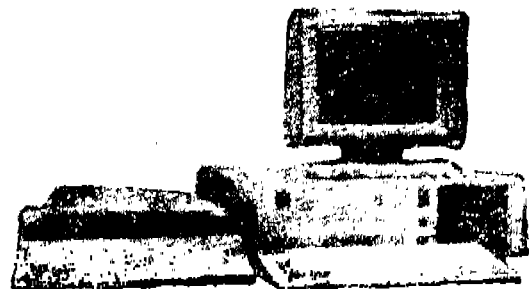
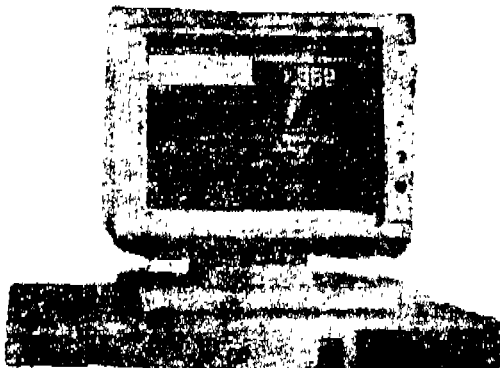
नई दिल्ली, 25 मार्च, 1995

का.आ. 930:—केन्द्रीय सरकार का विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात, सामाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडल का अनुमोदन) नियम, 1937 के उपबंधों के अनुरूप है और इस बात की संभावना है कि वह लगातार प्रयोग की अवधि में यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवाकरना रहेगा;

अतः केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते

हुए, "इन्डवैम ब्रेलॉग 500 मीरीज" टाइप के स्वतः सूचक गैर-स्वचालित तोलन उपकरण के माडल को (जिसे इसमें इसके पश्चात माडल कहा गया है) जिसका विनिर्माण मैमर्न इन्डवैम इन्स्ट्रुमेंटेशन लिमिटेड, 47 इवलपड प्लॉट फॉर इलेक्ट्रिकल एंड इलेक्ट्रॉनिक्स इण्डस्ट्रीज, पंचनगुडी, मद्रास-60096 द्वारा किया गया है और जिसे अनुमोदन चिन्ह आई.एन.डी./09/94/49..... अनुदेशित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है;

आगे, केन्द्रीय सरकार, उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि माडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी मिडान के अनुसार और उसी सामग्री ने जिसमें अनुमोदित माडल का विनिर्माण किया गया है विनिर्मित तीस किलोग्राम की अधिकतम क्षमता वाले समरूप मेक, यथार्थता और उसी मीरीज के कार्यकरण वाले तोलन उपकरण भी हैं।



माडल (आकृति देखिए) एक मध्यम यथार्थता (यथार्थता वर्ग 3) का पी सी आधारित तौलन उपकरण है जिसकी अधिकतम क्षमता 5 किलोग्राम और न्यूनतम क्षमता 40 ग्राम है। सत्यापन मापमान अन्तर (ड.) 2 ग्राम है। इसमें एक टेयर युक्ति है जिसका व्यकलनात्मक प्रतिधारण टेयर प्रभाव 100 प्रतिशत है। उपकरण का ढाँचा मृदु स्टील शीट का बना है। भारग्राही स्टेनलेस स्टील का है जो वैयक्तिक कम्प्यूटर का मॉनीटर तौल परिणाम उपदर्शित करता है। यह उपकरण 230 वोल्ट, 50 हर्ट्ज के प्रत्यावर्ती धारा बिद्युत प्रदाय पर प्रचालित होता है।

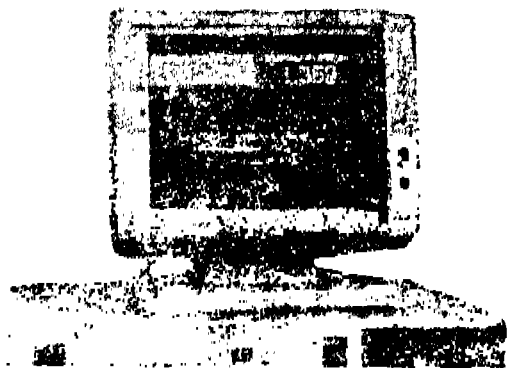
[फा नं. डब्ल्यू एम-21 (26)/93]

सुजीत बनर्जी, संयुक्त सचिव

MINISTRY OF CIVIL SUPPLIES, CONSUMER AFFAIRS,
AND PUBLIC DISTRIBUTION

New Delhi, the 25th March, 1995

S.O. 930.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report is in conformity with the provisions of the Standards of Weights



The Model (see figure) is a medium accuracy (accuracy class III) PC based weighing instrument with a maximum capacity of 5 kilogram and minimum capacity of 40 gram. The verification scale interval (e) is 2 gram. It has a tare device with a 100 per cent subtractive retained tare effect. The body of the instrument is made of mild steel sheets. The load receptor is of stainless steel. The Monitor of the

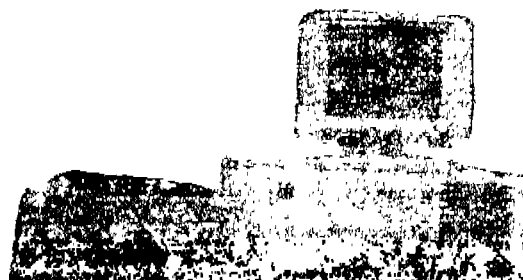
and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of Model of self-indicating non-automatic PC based weighing instrument type "INDCHEM WEIGHLOG 500" series therein after referred to as the Model) manufactured by

M/s. Indchem Instrumentation Limited,
47, Developed Plots for Electrical and
Electronics Industries,
Perungudi,
Madras-600 096.

and which is assigned the approval mark IND/09/94/49.

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 20 kg. by the same manufacturer in accordance with the same principle and with the same materials with which, the approved Model has been manufactured.



Personal Computer indicates the weighing result. The instrument operates on 230 volts, 50 hertz, alternate current power supply.

[F. No. WM-21(26)/93]

SUJIT BANERJEE, Jt. Secy.

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 24 जनवरी, 1995

का. आ. 931.—पवनहंस लिमिटेड के शासन और संगम अनुच्छेद के अनुच्छेद 38(क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राष्ट्रपति इस मंत्रालय की दिनांक 17 जनवरी, 1995 की समय-समय पर यथासंशोधित अधिसूचना संख्या एवा -13015/81/88-ए. सी. (वी. एल.) के तहत शक्ति पवनहंस लिमिटेड के निदेशक-मंडल के कार्यकाल को और जिगकी अवधि 17 नवम्बर

1994 की अधिसूचना संख्या एवा 13015/28/92-ए. सी. (वी. एल.) द्वारा 16-1-1995 तक बढ़ाई गयी थी, 16-1-1995 से और आगे छः महीने के लिए बढ़ाने का अनुमोदन प्रदान करते हैं।

2. राष्ट्रपति इस मंत्रालय में पवनहंस के कामकाज की देखने वाले निदेशक/उप सचिव को 17 जनवरी, 1995 में कम्पनी के निदेशक मंडल में पदेन निदेशक भी नियुक्त करते हैं।

[एफ संख्या एवा-13015/28/92-ए. सी. (वी. एल.)]

एम. भट्टराजजी, अवसर सचिव

MINISTRY OF CIVIL AVIATION & TOURISM
(Department of Civil Aviation)

श्रम मंत्रालय

New Delhi, the 24th January, 1995

नई दिल्ली, 8 मार्च, 1995

S.O. 931.—In exercise of the powers conferred by Article 38(a) of the Memorandum and Articles of Association of the Pawan Hans Limited, the President is pleased to convey approval to a further extension for six months beyond 16-1-1995 of the term of the Board of Directors of Pawan Hans Limited, constituted vide this Ministry's notification No. AV 13015/81/88-ACVL, dated the 17th January, 1991 and as amended from time to time and the term of which had been extended upto 16-1-1995, vide Notification No. AV. 13015/28/92-ACVL, dated the 17th November, 1994.

2. The President is also pleased to nominate Director/Deputy Secretary in this Ministry, dealing with Pawan Hans, as an *ex-officio* Director on the Board of Company with effect from the 17th January, 1995.

[F. No. AV. 13015/28/92-ACVL]
M. BHATTACHARJEE, Under Secy.

इस्पात मंत्रालय

नई दिल्ली, 16 मार्च, 1995

क्रा. आ. 932.—राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित, 1987) के नियम 10 के उप नियम (4) के अनुसरण में केन्द्रीय सरकार एतद्वारा महाराष्ट्र इलैक्ट्रोस्मैल्ट लिमिटेड, चन्द्रपुर (स्टील अथारिटी आफ इण्डिया लिमिटेड की सहायक कम्पनी) के निम्नलिखित कार्यालयों को जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

(1) महाराष्ट्र इलैक्ट्रोस्मैल्ट लिमिटेड, ए. डी. बी. डब्ल्यू. जी. सोमवार बंगला, दूसरी मंजिल प्लॉट नं. 94 केनाल रोड, रामदास पीठ नागपुर, महाराष्ट्र ।

(2) महाराष्ट्र इलैक्ट्रोस्मैल्ट लिमिटेड, निर्मल, 10वीं मंजिल नारिमन प्वाइंट बम्बई-400021 (महाराष्ट्र)

[सं. ई-11011 (1)/95-हिन्दी]

हंस कुमार जैन, उप सचिव

MINISTRY OF STEEL

New Delhi, the 16th March, 1995

S.O. 932. In pursuance of sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976 (As amended, 1987) the Central Government hereby notify the following offices of the Maharashtra Electroselt Limited, Chander Pur (A Subsidiary of Steel Authority of India Limited), where of more than 80 per cent staff have acquired working knowledge of Hindi :—

(1) Maharashtra Electroselt Limited A.D.V.W.G. Somatwar Bungalow, Second Floor Plot No. 94, Kenal Road, Ram Das Peeth Nagpur (Maharashtra).

2 Maharashtra Electroselt Limited "Nirmal" 10th Floor, Nariman Point Bombay-400021 (Maharashtra).

[No. E. 11011(1)/95-Hindi]

H. K. JAIN, Dy. Secy.

क्रा. आ. 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एम सी एल के प्रबंधन के सर्वोच्च नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुखनेश्वर के पंच-पट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था ।

[सं. एन-22012/299/93-आई आर(सी-II)]

राजलाल, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 8th March, 1995

S.O. 933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of M.C. Ltd. and their workmen, which was received by the Central Government on 6-3-95.

[No. L-22012/299/93-IR-C.II]

RAJA LAL, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR :

Present :

Sri P. K. Tripathy, M.A., LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 3 OF 1944 (Central)
Dated, Bhubaneswar, the 20th February, 1995

BETWEEN

The management of Deulbera Colliery, Talcher Area of Mahanadi Coalfields Ltd., P.O. Dera, Distt : Dhenkanal.
.. First party-management.

AND

Their workmen represented through Orissa Coalfields Labour Union, At/P.O. Deulbera, Dist : Dhenkanal.

.. Second party-workmen.

APPEARANCES :

Sri R. S. Sharma, Dy. Personnel Manager—For the first party Management.

Sri T. Tigga, Vice-President of the Union—For the party Management.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. L-22012/299/93-IR(C.II) dated 21-1-94.

"Whether the action of the management of Deulbera Colliery in deducting the wages of the workers of Champaposi Incline for the period from 17th to 23rd September '92 is justified? If not, to what relief the workers are entitled to?"

2. On 16-2-95, to which date the case was posted for hearing, the representatives of both the parties by filing a memorandum of settlement drawn-up in form-H stated to have settled the dispute out of Court in the interest of industrial peace and harmony and prayed to pass an Award in terms thereof. The terms of the settlement were read over and explained to the parties to which they admitted to be true and correct. The terms of the settlement being fair are recorded and an award is passed in terms of the settlement which do form part of the Award.

Dictated & corrected by me.

P. K. TRIPATHY, Presiding Officer

FORM 'H'

[See Rule 58]

Industrial Dispute (Central) Rules 1957

Memorandum of Settlement :

Representing the management

1. Sri M.V.K. Naidu,
Project Officer,
Deulbera Colliery.

Representing the Union.

1. Sri T. Tigga,
Vice President,
Orissa Coalfields Labour
Union.

SHORT RECITAL OF THE CASE

During the period w.e.f. 17th to 23rd September, 1992 the workers of Champapasi Incline did not go for work due to terrorising activities of some of the local miscreants causing damages to the production of the mine and ultimately loss to the country so also caused damage of the earning of the innocent workmen. The discussions were going on between the management and the Unions again and again and at last it is resolved.

TERMS OF SETTLEMENT

1. After prolonged discussion it was resolved and the dispute was settled.
2. The period of absence from 17-9-92 to 23-9-92 which was unauthorised absence would have been treated as no work no pay.
3. The workmen have been compensated accordingly by providing overtime on certain dates in the meantime (Sunday Wages).
4. This is full and final settlement. No parties including the workmen and this Union will have any claim, whatsoever nor raise any dispute in this regard.
5. In view of the above it is requested that "No dispute Award" may be given in I.D. Case No. 3/94 (C).

(T. Tigga)

Vice President,
Orissa Coalfields
Labour Union

(R. S. Sharma)

Dy. Personnel Manager
Talcher Area.

नई दिल्ली, 8 मार्च, 1995

का.आ. 934 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार एम्.ई.सी.एल. के प्रबन्धन के सदस्य नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एल-22012/222/89-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 8th March, 1995

S.O. 934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C. Ltd. and their workmen, which was received by the Central Government on the 6-3-95.

[No. I-22012/222/89-IR C-II]

RAJA LAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT/LC(R)(52)/1990

BETWEEN

S/Shri O. P. Kela, Samey Lal, Vishwapal Singh and Murlidhar represented through the General Secretary, Chhatishgarh Khadan Karkhana Mazdoor Union, Bankimongra, Post Bankimongra, District Bilaspur (MP)-495 447.

AND

The General Manager, S.E.C.L. Korba (West) Kusmunda Project, Post Kusmunda Project, District Bilaspur (MP)-495 454.

PRESIDED IN : By Shri Arvind Kumar Awasthy.

Appearances :

For Workmen : Shri Rambilash Shobhnath.

For Management : Shri A. K. Shasi, Advocate.

INDUSTRY : Coal Mines DISTRICT : Bilaspur (MP)

AWARD

Dated : February 13, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012(222)/89-IR (Coal-II) dated 8th February, 1990, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of the General Manager, South Eastern Coalfields Ltd., Korba (West) Area in denying promotion to S/Sri O. P. Kela, Samey Lal, Vishwapal Singh and Murlidhar Yadav, Clerk Gr. II to the post of Clerk Gr. I vide their DPC meeting held on 12-4-88 and Office Order dated 13-5-88, is justified ? If not, to what relief the workmen concerned are entitled ?"

2. The admitted facts of the case are that the workmen S/Shri O. P. Kela, Samey Lal, Viswapal Singh and Murlidhar Yadav were Clerk Gr. II in Kasmunda Project of S.E.C. Ltd. Bilaspur. It is also not in dispute that on 13-5-88 the Clerk Gr. II were promoted as Clerk Gr. I.

3. The case of the workmen is that they were superseded by their junior colleagues and the case of the impugned workmen for promotion to the post of Clerk Gr. I was not considered by the management. The impugned workmen have prayed for the promotion and consequential reliefs.

4. The case of the management is that the management has not denied the opportunity to the impugned workmen and they are not promoted as their case was not considered fit by the duly constituted D.P.C. It is further alleged that the record of preceding three years of these employees were taken into consideration and the DPC did not recommend their names for the promotion.

5. From the perusal of documents filed by the management, it is clear that the DPC has considered the case for promotion of the impugned employees. From the perusal of the statement of claim it is clear that the workmen are claiming promotion on the basis of seniority. The promotion cannot be claimed as a matter of right and the promotion is a managerial function which depend upon the suitability of the candidates on the recommendation of the DPC. The service record and experience were taken into consideration and the DPC has not recommended the names of the workmen for the promotion to the post of Clerk Gr. I.

6. However, the management and the General Secretary of the Union, Shri Rambilash Shobhnath, have filed the Settlement and it is alleged that the employees were promoted to the post of Clerk Gr. I and they do not want to pursue the case.

7. In view of the aforesaid circumstances, the workmen are not entitled for any consequential relief.

8. The workmen have been promoted after the reference. In the circumstances of the case, they are not entitled for any consequential relief. Reference is answered accordingly. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 मार्च, 95

का.आ. 935 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एल-22012/66/89-आई आर (सी-II)]

राजालाल, डेस्क अधिकारी

New Delhi, the 8th March, 1995

S.O. 935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of W.C. Ltd. and their workmen, which was received by the Central Government on the 6-3-95.

[No. L-22012/66/89-IR C-II]
RAJA LAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE R.F.E. NO. CGIT/LC(R)(192)/1989

BETWEEN

Shri Hybat S/o Raojee represented through the President, M. P. Koyla Khadan Mazdoor Panchayat (HMS), Patharkhera Area, Patharkhera, District Betul (MP)-460 449.

AND

The General Manager, W.C.L., Patharkhera Area, Patharkhera, District Betul (MP)-460 449.

Appearances :

For Workman : Shri Sandeep Dubey, Advocate.

For Management : Shri A. K. Shasi, Advocate.

INDUSTRY : Coal Mines

DISTRICT : Betul (MP)

AWARD

Dated : February 13, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification no. L-22012(66)/89-IR(C.II) Dated 27th September, 1989 for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the termination of Sri Hybat son of Raojee, General Mazdoor, Satpura Mine-II by the management of General Manager, Western Coalfields Ltd., Patharkhera Area, Patharkhera without enquiry is justified ? If not, to what relief the workman concerned is entitled ?"

2. The admitted facts of the case are that the workman was working as a General Mazdoor in Satpura Mine of W.C. Ltd. Patharkhera.

3. The case of the management is that the workman during the year 1986 remained absent without obtaining permission or sanction and in January, 1986, he was unauthorisedly absent for 3 days, in the month of February 86 he was absent for six days, in the month of March 86 was absent for 8 days, in the month of April 86 absent for 3 days and then he continuously remained absent from 11-5-86 till August, 1986. That on 5-7-86 the charge-sheet was issued to the workman. He admitted the charges levelled against him; that the workman being a habitual absentee was dismissed from service.

4. The case of the workman is that he remained absent due to the illness and the management has removed him from service without holding the enquiry.

5. The management has filed the enquiry papers and it is clear that the charge-sheet was issued to the workman and the workman has clearly admitted his guilt. The terms of reference are that whether the termination of the workman without enquiry is justified. However, the workman was a habitual absentee. The workman remained absent without permission and without any rhyme and reasons. The workman has not given any justification for his long absenteeism. No extinguishing circumstances exist to sympathetically consider the misconduct of the workman. Unauthorised long absenteeism causes disruption in the work and it is contagious misconduct which adversely affects the administration. Consequently, the order of dismissal of the workman is proportionate to his misconduct and the workman is not entitled for any relief what-so-ever.

6. It is held that the workman was removed after enquiry and his removal was justified and he is not entitled for any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 मार्च, 1995

का. आ. 936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस ई सी एल के प्रबन्धन के संबंध निम्नलिखित और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एल-22012/265/90-आई-आर (सी-I)]

राजालाल, डेस्क, अधिकारी

New Delhi, the 8th March, 1995

S.O. 936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C. Ltd. and their workmen, which was received by the Central Government on the 6-3-95.

[No. L-22012/265/90-IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT/LC(R)(43)/1991

BETWEEN

Shri Jag Lal Yadav represented through the Area Secretary, S.K.M.S. Office, Type No. 2/3, Jayaprakash Colony, S.E.C.L., Korba, P.O. Korba Colliery, Distt. Bilaspur (MP)-495 679.

AND

The Sub-Area Manager, S.E.C.L. Banki Colliery, P.O. Banki Mongra, Distt. Bilaspur (MP)-495 447.

PRESIDED IN : By Shri Arvind Kumar Awasthy.

Appearances :

For Workman : Himself.

For Management : Shri A. K. Shasi, Advocate.

INDUSTRY : Coal Mines DISTRICT : Bilaspur (MP)

AWARD

Dated : February 3, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012/265/90-IR(Coal-II) Dated 25-3-1991, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of General Manager, SECL, Korba (East), Bilaspur is justified in not promoting Sri Jag Lal Yadav, Electrical Fitter to the post of Asstt. Foreman/Electrical Supervisor in the DPC held in 1988 ? If not, to what relief the workman concerned is entitled to ?"

2. Parties have filed the Settlement. Terms of the Settlement are that the workman was promoted to the post of Asstt. Foreman (Electrical) in Technical and Supervisory Grade 'C' vide Office Order No. CGM/KB/PM(F)/SF-Prom/91/4065 dated 28th January, 1991. The application was

filed by the Counsel of the workman that the Settlement be not accepted as the Settlement on behalf of the workman has been signed by Shri N. C. Ghosh, Organising Secretary, S.K.M.S. (AITUC). It is alleged that Shri N. C. Ghosh has no authority to enter into the compromise on behalf of the workman. The dispute came for conciliation before the A.L.C. (C) Bilaspur and from the perusal of A.L.C. (C) file it is clear that the dispute on behalf of the workman was raised by Shri N. C. Ghosh. There is no evidence whatsoever to show that Shri N. C. Ghosh has not authority to enter into the Settlement on behalf of the workman.

3. However, the workman did not turn up and it is clear that as he has received the promotion under the Settlement, he is not interested in pursuing the petition regarding the incapacity of Shri N. C. Ghosh to enter into the Settlement on his behalf. The Settlement is just and proper and it is accepted. Consequently, no dispute award is hereby passed. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 मार्च, 1995

का. आ. 937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस ई सी एल के प्रबन्धन के संबंध निम्नलिखित और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एल-22012/10/94-आई आर (सी-II)]

राजा लाल, डेस्क, अधिकारी

New Delhi, the 8th March, 1995

S.O. 937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C. Ltd. and their workmen, which was received by the Central Government on the 6-3-95.

[No. L-22012/10/94 IR(C-II)]

RAJA LAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT/LC(R)(71)/1994

BETWEEN

The Secretary, S.K.M. Sangh (AITUC), Branch Central Workshop, S.E.C.L., Korba, District Bilaspur (MP)-495 001.

AND

The General Superintendent, Central E&M Workshop, S.E.C.L., Korba, P.O. Korba Colliery, District Bilaspur (MP)-495 679.

PRESIDED IN : By Shri Arvind Kumar Awasthy.

Appearances :

For Workmen : None.

For Management : Shri A. K. Shasi, Advocate

INDUSTRY : Coal Mines DISTRICT : Bilaspur (MP)

AWARD

Dated : February 13, 1995

This is a reference made by the Central Government, Ministry of Labour vide its Notification No. 22012/10/94-IR-C-II Dated 11-4-1994, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the demand of Samyukta Khadan Mazdoor Singh (AITUC) union regarding promotion of Shop Assts. of Central F&M Workshop, SECL, Korba is justified? If so, to what relief the shop Assts. of Central Workshop, SECL, Korba are entitled to and what should be the details?"

2. The workman has not appeared inspite of repeated notices. The workman has not filed the statement of claim. Consequently, there is no option but to pass a no dispute award. No dispute award is hereby passed. No order as to costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 मार्च, 1995

का.आ. 938 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस ई सी एल के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एल-22012/23/89-डी-4 (बी) आईआर (सी-II)]

राजा लाल डेस्क, अधिकारी

New Delhi, the 8th March, 1995

S.O. 938.--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.E.C. Ltd. and their workmen, which was received by the Central Government on the 6-3-95.

[No. L-22012/23/89-DIV(B)IR(C-II)]
RAJA LAL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

CASE REF. NO. CGIT/LC(R)(180)/1989

BETWEEN

S/Shri Ganga Singh and Parasram, represented through the General Secretary, M. P. Koyla Mazdoor Sabha (HMS), Post South Jhagrakhand Colliery, Distt. Surguja (MP).

AND

The Sub-Area Manager, South Jhagrakhand Sub Area, M/s. S.E.C.L., Post South Jhagrakhand Colliery, Distt. Surguja (MP).

PRESIDED IN : By Shri Arvind Kumar Awasthy.

Appearances :

For Workmen : Shri S. K. Rao, Advocate.

For Management : Shri R. Menon, Advocate.

INDUSTRY : Coal Mines

DISTRICT : Surguja (MP)

AWARD

Dated : February 3, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-22012(23)/89-D-4B/IR(C-II) Dated 15/19-9-1989 for adjudication of the following industrial dispute :

SCHEDULE

"Whether the action of the South Jhagrakhand Colliery of Hasdeo Area of M/s. SECL, P.O. South Jhagrakhand Colliery, Distt. Surguja in superannuating their workmen Sri Ganga Singh son of Sri Jang Bahadur Singh and Sri Parasram S/o Sri Jagpat w.e.f. 6-11-87 and 12-11-87 respectively without complying with the provisions of Implementation Instruction No. 37 dated 5-2-1981 is legal and justified? If not, to what relief the workmen concerned are entitled and from what date?"

2. Admitted facts of the case are that the workmen, Shri Ganga Singh and Shri Parasram were workmen and they were working under the control of the Sub-Area Manager of South Jhagrakhand Colliery of S.E.C.L.

3. The case of the workman is that their date of birth was wrongly recorded in the Register of Management and these workmen made representation to the Management for the correction of their age. That the management issued a letter on 5-11-1987 to the applicants to appear before the Age Determination Committee. Then it was found that there was no such committee but there was one officer and the result of the Committee was not informed to the workmen. It is proved that the workmen be ordered to remain in service upto 1997 and 1998 and the management be directed to pay them back wages.

4. The case of the management is that age of the workmen was rightly recorded in Form B Register and for the verification and determination of age of these employees the Implementation Instruction No. 37 were followed and duly constituted Age Determination Committee has given the decision that their age was rightly recorded by the management.

5. The Settlement is filed by the parties. According to the Settlement the case of the workmen for determination of their age is referred to the Apex Medical Board and the workmen have agreed to abide with the decision of the Apex Medical Board. The Settlement is just and proper. Following are the terms of settlement :—

TERMS OF SETTLEMENT

1. Agreed that S/Shri Ganga Singh S/o Jang Bahadur Singh, Ex-T.T.M. and Parasram S/o Jagpat, Ex-Haulage Khalasi of South Jhagrakhand Colliery will be referred to Apex Medical Board for determination of their age.
2. Agreed that the decision of the Apex Medical Board shall be final and binding on both the parties.
3. Agreed that the dispute is fully and finally resolved on account of the above settlement and the union/workman further agreed that the issue settled herein will not be raised at any forum before any authority.
4. Agreed that the copy of the settlement will be sent to appropriate authority for registration and will also be filed before the Hon'ble Presiding Officer, CGIT, Jabalpur for passing Award on the above terms of settlement.

6. In view of the aforesaid Settlement, no dispute award is passed. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 8 मार्च, 1995

का.आ. 939 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के संबद्ध नियोजकों

और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-3-95 को प्राप्त हुआ था।

[सं. एन-22012/254/93-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 8th March, 1995

S.O. 939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure in the industrial dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on the 6-3-95.

[No. L-22012/254/93-IR CH]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE SRI S. K. SRIVASTAVA PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT, PANDU NAGAR, DEOKI
PALACE ROAD, KANPUR

Industrial Dispute No. 4 of 1994

In the matter of dispute between
Smt. Kishori Begum
C/o Virendra Singh
C/o of B.P. Saxena
426 W-2 Basant Vihar.
Kanpur.

AND

District Manager,
Bhartiya Khadya Nigam
14/73 Civil Lines Kanpur.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its notification No. L-22012/12/54/93/I.R.(C-II) dt. 19-1-94, has referred the following dispute for adjudication to this Tribunal :—

Kya Prabandhak Shartiya Khadya Nigam Kanpur Ke dwara Smt. Kishori Begum Patni W. Gulam Rasool ki 16-9-86 se sewa smapt karne aur une compassionate ground bhi niyajan na dene nyayochit hai ? Yadi nahi to sambandhit karmkar kis anutosh ka Haqdar hai ?

2. In the instant case the workmen concerned has filed an application dt. 28-2-95 alongwith the an affidavit stating that since she had been given appointment by the employer on the post of Mahila Sahayak Shramik as such she does not want to press the present reference.

3. In view of the facts and circumstances of the case the reference has become infructuous and the concerned workmen is entitled to no relief.

4. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 मार्च, 1995

का.आ. 940 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लिमि. की मुनीडीह क्षेत्र

की मुनीडीह परियोजना के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं.-I), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-95 को प्राप्त हुआ था।

[संख्या एन-20012/231/91-आई आर (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th March, 1995

S.O. 940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Moonidih Project under Moonidih Area of M/s. BCCL and their workmen, which was received by the Central Government on the 8-3-95.

[No. L-20012/231/91-IR (Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A)
of the Industrial Disputes Act, 1947.

Reference No. 79 of 1992

PARTIES :

Employers in relation to the management of Moonidih
Project under Moonidih Area of BCCL,

AND

Their Workmen

PRESENT :

Shri P. K. Sinha,
Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.
For the workmen : Shri B.M. Lall, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated the 21st February, 1995

AWARD

By Order No. L-20012(231)/91-I.R.(Coal-I) dated 28-8-92 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Moonidih Area of M/s. Bharat Coking Coal Ltd., in suspending Shri Noor Mohammad, PRM Token No. 6616 w.e.f. 27-10-90 in paying 50 per cent House Rent Allowance is justified ? If not, to what relief is the workmen entitled ?"

2. 2-5-1995 was the date fixed for hearing of this case. But Sri B.M. Lall, Advocate, appearing on behalf of the concerned workman, filed a petition stating therein that during the pendency of the reference before this Tribunal, the management had dismissed the concerned workman from service vide order dated 17th/18th September, 1991, hence he had filed a fresh industrial dispute over his wrongful dismissal which would cover his demand in this reference case as well. Hence, he prayed to close the present reference. Sri Joshi had no objection to the prayer of Sri B. M. Lall.

3. Under such circumstances, I render a 'no dispute' award in the present industrial dispute.

P. K. SINHA, Presiding Officer

नई दिल्ली, 9 मार्च, 1995

का.आ. 941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लि. की ईस्ट बामूरिया कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं.-I), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-95 को प्राप्त हुआ था :

[संख्या एल-20012/74/92-आई आर (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th March, 1995

S.O. 941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of East Bassuriya Colliery of M/s. BCCL and their workmen, which was received by the Central Government on the 8-3-95.

[No. L-20012/74/92-IR(Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947.

Reference No. 80 of 1993

PARTIES :

Employers in relation to the management of East Bassuriya Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha,
Presiding Officer.

APPEARANCES :

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri D. Mukherjee, Secretary, Bihar Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 20th February 1995

AWARD

By Order No. L-20012(74)/92-IR.(Coal-I) dated 1-3-93, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of Bihar Colliery Kamgar Union for regularisation of S/Shri Haldar Mahato and Girish Bauri as Tyndal w.c.f. 1980 and payment of Cat. IV wages with protection of group wages by the management of East Bassuriya Colliery is justified? If so, to what relief the workman are entitled?"

2. The order of reference was received by this Tribunal on 19-3-1993. Thereafter, notice was issued to the sponsoring Union to file written statement on behalf of the workmen. Thereafter adjournments were given to file written statement by the sponsoring Union. On 19-1-95 Shri D. Mukherjee Secretary of the sponsoring Union appeared and had prayed for 15 days time to file written statement, promising that on his failure to file the written statement on the next date he would pay for rendering no dispute award. On 6-2-95 Shri Mukherjee, appearing on behalf of the sponsoring Union, had prayed to pass 'no dispute' award.

3. Accordingly, I render a 'no dispute' award in the present reference case.

P. K. SINHA, Presiding Officer

नई दिल्ली, 9 मार्च, 1995

का.आ. 942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. टाटा आयरन एंड स्टील कम्पनी लिमि. की वेस्ट बोकारो कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-95 को प्राप्त हुआ था।

[संख्या एल-20012/209/91-आई आर (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th March, 1995

S.O. 942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2) Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of West Bokaro Colliery of M/s. TISCO Ltd., and their workmen which was received by the Central Government on 8-3-1995.

[No. L-20012/209/91-IR (Coal-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri D. K. Nayak,
Presiding Officer.

In the matter of an industrial dispute under section 10(1)(d) of the I.D. Act, 1947.

Reference No. 156 of 1991

PARTIES :

Employers in relation to the management of West Bokaro Colliery of M/s. Tisco. Ltd. and their workmen.

APPEARANCES :

On behalf of the employers—Shri B. Joshi, Advocate.

On behalf of the workmen : Shri Raj Vijay Singh, the concerned workman himself.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 28th February, 1995

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(209)/91-I.R.(Coal-I), dated, the 26th November, 1991.

SCHEDULE

"Whether the dismissal of Shri Raj Vijay Singh a Security Guard of West Bokaro Colliery of M/s. TISCO Ltd., P.O. Ghatotand, Dist. Hazaribagh with effect from 25-6-86 is justified? If not, to what relief the workman is entitled?"

2. Relating to that reference the concerned workman filed him W.S. stating inter alia that the chargesheet submitted upon him was not legal one and enquiry held pursuant to the said chargesheet was also not proper as it was exparte one. He alleged that he was not in know of that enquiry and so the said enquiry was not proper and fair.

3. It is stated further that over the incident of firing he was arrested and thereafter he was released on bail and ultimately he was acquitted in the said case and thereby action taken by the management in the said enquiry dismissing the concerned workman from 25-6-86 is not justified and he pressed for reinstatement with back wages.

4. The management in his written statement-cum-rejoinder has stated that the concerned workman was initially appointed as Watchman on 26-12-79 and he was redesignated as Security Guard on 1-1-83. It is stated further that over the incident of carrying company's property there was exchange of words between this workman and Fuleshwar Mahato who was found carrying such articles and as a result the concerned workman shot him resulting his death and as the said work was not appraised by the management he was issued with a chargesheet dt. 4-1-86 for commission of misconduct under clause 27(5) and 27(9) of the Certified Standing Orders and he was sent with notice even by Regd. post but he did not turn up. Accordingly the enquiry took place in his absence.

5. The further contention of the management is that the concerned workman came to the colliery on 12-3-86 and made an application for joining his duty but he left the place on 13-3-86 with intimation that he was in need of rest and thereafter on 17-3-86 he requested the management to transfer him to other place as Security Guard. In this way the matter was dragged and ultimately he did not resume his duty and after holding the domestic enquiry the concerned workman was found guilty of the misconduct charged against him and he was dismissed from his service and the said order of dismissal was communicated to him by letter dt. 25-6-86.

6. In the rejoinder the facts stated by the workman were categorically denied in every steps.

7. In this Tribunal the point arose for consideration whether the domestic enquiry was fair and proper and it was decided by Order No. 23 dt. 30-8-93 that the enquiry was not fair and proper and the management was directed to produce witness to lead evidence afresh.

8. The management examined only MW-1 Shri J.P. Bapat and marked several documents which are on record and the case was fixed for argument as the concerned workman declined to adduce any oral evidence.

9. In course of hearing of the argument it was argued by the learned advocate for the management that the concerned workman was given opportunity on transfer as Security Guard in Noamundi but he declined. However, the management is ready to absorb him if he complies with the transfer order of the management.

10. The concerned workman contended that he was not allowed to join at Noamundi. But in the midst of such dispute this Tribunal asked the concerned workman to report to Noamundi as it was suggested by the learned Advocate for the management and fixed date on 23-2-1995 for reporting in this regard and this order was passed by Order No. 35 dt. 31-1-95. On 23-2-1995 the concerned workman appeared personally and

reported that he had already joined as Security Guard in Noamundi and that was approved by the learned Advocate for the management.

11. Under such circumstances considering the said facts and the document available on record and exhibited in this case I am confident that though the enquiry was held by the management against the concerned workman and he was found guilty of the alleged misconduct and ultimately he was placed into his service on his transfer to Noamundi from the place where the incident took place till the date of joining at Noamundi by the concerned the reason best known to the concerned workman as well the management, the said workman remained idle.

12. In the matter of adjudication or merit from the evidence of MW-1 it is clear that the case was started over the incident of 20-12-85 for firing by the concerned workman and for the same an FIR was lodged which was marked as Ext. M-7. It is also on record that the management issued chargesheet alleging for commission of the misconduct under various clauses of the Certified Standing Orders and the photo copy of the said chargesheet has been marked as Ext. M-1. It also appears from Ext. M-8 that the concerned workman filed an application on the ground of his illness and by an application dt. 17-3-86 he requested the management to transfer him to another division of the company and to post him as Security Guard and the said application has been marked as Ext. M-9. However, the management by its letter dt. 20-3-86 asked the concerned workman to report for his duty at his original place but due to apprehension the concerned workman did not join and remain absent from duty and ultimately he was dismissed from service holding domestic enquiry. It is also on record that a letter dt. 27-10-86 was addressed to the Secretary to the Government of India, Ministry of Labour by the ALC(C) regarding Industrial dispute and the same has been marked Ext. M-11. Furthermore it appears from Ext. M-13 that the concerned workman again filed an application to transfer him to other place and by letter dt. 19-12-89 addressed to the Chief Personnel Manager and then a letter marked Ext. M-13 and thereafter the letter marked Ext. M-14 were also issued. It appears that after full consideration of the case of the concerned workman he was asked to join his duty at Noamundi and to report to the Chief Security Officer, Noamundi for this purpose. Ext. M-15 is the photo copy of the letter dt. 20-12-89 addressed to the Director of Collieries, West Bokaro Chief Security Office regarding joining of the concerned workman. But it is fact that the concerned workman did not join at Noamundi and after that this reference was made.

13. In view of the oral and documentary evidence and allowing the concerned workman to join at Noamundi after transferring him from the place of incident it clearly goes to show that whatever may be the reason the management reinstated the concerned workman in his service and transferred him at Noamundi in the same post where he was. Thereby it can be held safely that the order of dismissal of Shri Raj Vijay Singh, a Security Guard of West Bokaro Colliery of M/s. TISCO Ltd. with effect from 25-6-80 was not justified.

14. Thus decision of the first part of the reference case is in favour of the concerned workman.

15. The next question which invites my decision is what relief the concerned workman is entitled to. From Ext. M-14 it appears that the concerned workman by letter dt. 20-12-1989 was requested to join at Noamundi and to report for the same to the Chief Security Officer, Noamundi for the reasons that the concerned workman already withdraw the dispute against the order of dismissal pending before the ALC(C). But the fact remains that the concerned workman declined to join pursuant to the said letter and ultimately he joined after the order was passed on 31-5-1995 in course of hearing of argument of this reference. Under the circumstances this Tribunal finds that there is no fault on the part of the management for not joining by the concerned workman pursuant to the letter dt. 20-12-89 specially when he withdrew his dispute before the ALC(C) and the matter was settled.

16. In view of such fact this Tribunal is of the opinion that when already the reinstatement has taken into shape the concerned workman is entitled to get the back wages with all benefits for the period 25-6-86 till 31-12-1989 as some relaxation is given to the concerned workman for getting infor-

mation of his reinstatement by the letter dt. 20-12-1989. But the concerned workman is not entitled to get any back wages to that period as he could not show any paper nor he was able to satisfy this Tribunal what prevented him to join at Noamundi which he urged in course of hearing contending that he was not allowed to join. To make it more clear it is further ordered that the concerned workman will get pay and all other benefits having continuity of his service and increment in the meantime, if any, holding as if he was in service and he will get pay and other allowances from the date of joining at Noamundi after making notional fixation with increment taking into consideration of his earlier pay. However, he will not get any wages for the period from 1-1-90 just before the date of joining at Noamundi for the reason stated above. The management is to give effect of the Award within 3 months from the date of petition.

An award is passed accordingly.

D. K. NAYAK, Presiding Officer

नई दिल्ली, 10 मार्च, 1995

का.आ. 943 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई सी एल के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-3-95 को प्राप्त हुआ था।

[सं. एल-22012/371/90-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 10th March, 1995

S.O. 943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of E.C. Ltd. and their workmen, which was received by the Central Government on 8-3-1995.

[No. L-22012/371/90-IR (C-II)]

RAJA LAL, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Sri P. K. Tripathy, M.A.L.L.B.,
Presiding Officer, Industrial Tribunal,
Orissa, Bhubaneswar.

Industrial Dispute Case No. 7 of 1991 (Central)

Bhubaneswar, the 21st February, 1995

BETWEEN

The management of Nandira Colliery of South Eastern Coalfields Ltd., At/P.O. South Balanda, Via, Talcher, Dist. Dhenkanal .. First party—management.

AND

Their workman Sri Bholanath Sahoo, At/P.O. Jarada, Via Talcher Dist. Dhenkanal, Orissa-759001.
.. Second party—workman.

APPEARANCES :

Sri R. S. Sharma, Dy. Personnel Manager—for the first party-management.

Sri Bholanath Sahoo—The second party workman-himself.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the 'Act') have referred the following dispute for adjudication vide their Order No. L-22012/371/90-IR (C-II) dated 20-2-1991 :—

"Whether the action of the management of Nandira Colliery, SEC Ltd., P.O. Balanda, Via Talcher, Dist. Dhenkanal, Orissa in terminating the services of Sri Bholanath Sahoo, piece-rated Loader with effect from 2-4-1988 is legal and justified? If not, to what relief is the workman entitled?"

2. The first party-management is the employer and the second party-workman is the employee under it. As it reveals from the pleadings of both the parties, the fact involved in the case is that the workman was engaged as a piece-rated loader at Nandira Colliery under the General Manager, South Eastern Coalfields Ltd. The workman worked to the satisfaction of his employer till the end of 1986. In 1987, he started showing slackness in duty for which reason he was charge-sheeted for more than once on the ground of unauthorised absence. So far as the proceeding is concerned, the charge sheet dated 24-10-87 is the relevant charge sheet in which he was alleged to have committed breach in duty by remaining absent on 8-10-87, 9-10-87, 13-10-87 and 19-10-87. In that connection, a domestic enquiry was held in presence of the workman and the enquiry officer found the second party guilty of the charges. After perusal of the same, the disciplinary authority i.e., the Project Officer, Nandira Colliery, on 30-3-88 passed order terminating the services of the workman with immediate effect. The workman approached the Officers of the management for reinstatement and when failed he approached the labour machinery of the Central Government and the Asst. Labour Commissioner (Central), Bhubaneswar took up the matter for conciliation but it ended in failure. Accordingly, he submitted the report and after perusal of the same and in exercise of the powers as mentioned above the Central Government sent the schedule of reference for adjudication.

3. The second party-workman in his claim statement has advanced a case of his innocency and victim of the circumstances and has prayed for reinstatement in service with back wages. On the other hand, the management in its written statement has pleaded due and deliberate negligence of the workman by remaining absent from duty on the aforesaid four dates (8-10-87, 9-10-87, 13-10-87 and 19-10-87) and that the conduct of the workman was incorrigible. The management has further contended that in the domestic enquiry the workman was afforded with proper opportunity to participate in the proceeding and to defend his case and the enquiry was conducted freely and fairly by following the procedure and principle of natural justice and the disciplinary authority after taking into consideration the gravity and the seriousness of the circumstances and the alleged charges passed order terminating the services of the workman with effect from 2-4-88. The management craved for the leave of the Tribunal to adduce evidence on merit of the charges if the domestic enquiry is found to be bad in law in consonance with the principle of natural justice.

4. On the basis of the aforesaid pleadings, the following issues have been framed :—

ISSUES

1. Whether the action of the management of Nandira Colliery, S.E.C. Ltd., P.O. Balanda, Via Talcher, Dist. Dhenkanal, Orissa in terminating the services

of Sri Bholanath Sahoo, piece-rated Loader with effect from 2-4-1988 is legal and justified?

2 To what relief, if any, the workman is entitled?

5. It appears from the order sheets that though in the written statement the management mentioned to take-up the validity of the domestic enquiry as a preliminary issue but it did not pursue that prayer and did not request the Tribunal to take-up the matter relating to the domestic enquiry as a preliminary issue. Under such circumstance, perhaps when the matter was take-up for hearing, it was heard on merit on all the issues and not only on the validity of the domestic enquiry.

6. To substantiate its case, the management adduced the evidence of two witnesses and relied upon documents marked Exts. 1 to 6. The workman examined two witnesses including himself as W.W. No. 2 and relied upon the document marked Ext. A.

7. At the stage of hearing argument, on the direction of the Tribunal, the original proceeding file (domestic enquiry file) was produced by the management and the same has been marked as Court's Ext. I.

8. Issue No. 1 :

Whether the action of the management of Nandira Colliery, S.E.C. Ltd. P.O. Balanda, Via Talcher, Dist. Dhankanal in terminating the services of Sri Bholanath Sahoo, piece-rated Loader with effect from 2-4-1988 is legal and justified?

While considering the above quoted issue, the facts involved in the domestic enquiry, the procedure adopted in conducting the same and the opportunities, if provided to the workman in contesting the domestic enquiry are the factors which are required to be gone into to consider the question of legality and justifiability of the action of the management in terminating the services of the workman on the basis of such a domestic enquiry.

9. In the pleadings of the parties, the relationship of employer and employee between the management and the workman at the relevant point of time has not been disputed. It has also been contended by the workman and not disputed by the management that from August '83 the workman was working as a piece-rated Loader. Even the evidence of W.W. No. 2 (workman) that his father was a Mazdoor under the management and after his death, the workman was appointed as a Loader has not been disputed or denied by the management. It is the consistent case of the management as well as the workman that all throughout till 1986 the workman was gentle, sober and was working to the satisfaction of the management. In this connection the witnesses who were examined in the domestic enquiry have stated that fact which is evident from Court's Ext. I besides the xerox copies marked Ext. 3 on behalf of the management.

10. As it reveals from the domestic enquiry file (Court's Ext. I), the charge sheet No. 4318-22 dated 24-10-87 was issued against the workman on the basis of report dated 20-10-87 of Sri Subrata Chakravorty, Shift In-charge. For the sake of convenience that report has been marked as Court's Ext. I/a. In the said report the Shift-In-charge mentioned that—

"On 9-10-87 his duty was in first shift (7 A.M. to 3 P.M.) but he had come out of the Mine at 1.30 P.M. Again on 12-10-87 and 13-10-87 he was in 3rd shift (11 P.M. to 7 A.M.) but he came out of the Mine at 4.30 A.M. and 3 A.M. On 19-10-87 he was in 2nd shift but he left the working place at 7.30 P.M."

Making the aforesaid specific complaint the aforesaid report was submitted by the Shift In-charge. On the basis of that report the above worded charge sheet dated 24-10-87

was served on the workman. The relevant portion of the charge reads as hereunder :—

"It has been reported that on 9-10-87, 12-10-87, 13-10-87 and 19-10-87 you had left working place without completing your work without doing any work before the end of the respective shifts without informing your Controlling Supervisor/Officer and without his permission.

Even after you have been instructed not to indulge such type of unsafe practice, you continued to sneak out from the underground."

(The underlining portion is to give emphasis)

The fact that the Shift In-charge had made report on 20-10-87 is not mentioned in the charge sheet nor a copy of that report was enclosed and served on the workman alongwith the charge sheet. Even what is the source of the report that has not been disclosed in the charge sheet till the commencement of the enquiry.

Through the evidence of either of the Management's witnesses, the management has not explained the reason for non-furnishing a copy of the report i.e., Ext. I/a. The management has not filed a copy of the Standing Order and has even not referred to any particular provision therein to argue that copies of documents or list of witnesses are not to be furnished. Be that as it may, the principle of natural justice demands that the charge-sheeted workman must be made aware of availability of specific evidence so as to afford him a reasonable opportunity to defend his case.

It is thus clear from what has been discussed above that the domestic enquiry was conducted and proceeded in violation of the principle of natural justice.

11. In the preceding paragraph relevant portion from the report of the Shift In-charge and the contents of the charge have been quoted with a view to show the apparent lacuna in alleging the facts against the workman. In that regard, it may be noted that in Ext. I/a the Shift In-charge did not allege or report that the workman left the place of work "without completing his work or without doing work." On the other hand, he reported that on the said four dates he left the place of work before completion of the shift time. Similarly, it is also conspicuously absent in the report (Court's Ext. I/a) that the workman left the place of work without informing his controlling Supervisor/Officer and without his permission but such fact has been mentioned in the allegations noted in the charge sheet. The Shift In-charge, while giving his statement in the domestic enquiry has stated that on 12-10-87 the workman left the place of work after taking permission from that Shift In-charge on the ground that the workman was not feeling well. He has not stated anything that on 10-10-87, the workman left the work place with or without permission. A combined reading of two statements of Narayan Das (as M.W. No. 1 in domestic enquiry on 19-11-87 and 1-1-88) goes to show that on 9-10-87 the workman sought the permission of this witness to leave the work place and the witness does not remember whether he had granted that permission. It is the statement of the departmental witness (in the domestic enquiry) that on 13-10-87 no job was allotted to the workman on the ground that he reported before the Munshi i.e., M.W. No. 1 about 2 hours after the commencement of the shift. Thus, the workman might be guilty of coming late, if that is proved, but certainly he cannot be charged for leaving the work place in the alleged manner on 13-10-87 as no job was provided to him in that shift. Thus, it is clear from the above discussed facts and circumstances that the management framed the charge alleging facts which were not alleged against him in the report Ext. I/a. The management has not stated that after receipt of that report the matter was enquired into before drafting the charge sheet. Thus, the charge-sheet was whimsically drafted alleging facts, which were baseless on the above mentioned aspects of leaving the place of work without completing the work and without taking permission of the concerned Officer. In this connection, the management is devoid of any explanation either through oral or documentary evidence tendered in this Tribunal.

12. The domestic enquiry file (Court's Ext. 1) reveals that the Enquiry Officer had no independency of mind and action while conducting the enquiry and he has interestedly acted and sided with the management althroughout the pendency of the proceeding. A few circumstances which will be presently mentioned will justify the aforesaid comments against the enquiry officer. Being relevant it may be mentioned here that while conducting a domestic enquiry, an enquiry officer discharges a quasi-judicial function. Even if he is an Officer working under the management, yet while acting as the enquiry officer, he is to act and exhibit impartiality. There cannot be quarrel on this settled principle.

The first sitting of the domestic enquiry which was taken up on 17-11-87 was adjourned to 18-11-87 for hearing as the management was not ready with witnesses. On 18-11-87, the enquiry was suo motu adjourned to 19-11-87. When the management defaulted, appropriate order should have been passed but that was not done and the proceeding was adjourned to 19-11-87.

On 19-11-87 when the enquiry commenced the enquiry officer has noted that the management's representative and two witnesses (S. Chakravorty and Narayan Chandra Das) were present. But on that date the enquiry officer recorded the statement of the aforesaid two witnesses besides one Nath Bhutia as the third witness from the side of the management. After recording the statement of S. Chakravorty (M.W. No. 2) and before examining the third witness, the M.W. No. 2 was re-examined. Similarly, M.W. No. 3 was also re-examined with opportunity to cross-examine after such re-examinations. There is nothing in the note sheets (minutes of the proceeding) that the management's representative desired or requested for such re-examination of such witness. Similar lapses and lacunas are there when M.W. No. 4 was re-examined.

It reveals from the domestic enquiry file that on 19-11-87 from the side of the management three witnesses were examined. Thereafter the Enquiry Officer recorded the statement of the workman. The enquiry officer was to record the statement of the charge sheeted workman after closure of the evidence from the side of the management. Legally a procedure cannot be conceived that before closure of the case of the department, the charge-sheeted workman would be called to give his defence statement. Thus when the statement of workman was recorded after examination of three departmental witnesses, it can validly be presumed that, the department closed the evidence from their side and thereafter the workman was called-upon to give his statement. It cannot otherwise legally be conceived. Thus, if that happened in that manner the enquiry part should have been concluded on 19-11-87 after recording the statement of the workman. But the enquiry officer did not mention any such thing in the minutes dated 19-11-87. On the other hand, he resumed the enquiry again on 1-1-88 and recorded the further evidence by examining the witness No. 1 for the department and thereafter recorded the statement of Department witness No. 4 and further evidence of witness No. 3. On 1-1-88 only the enquiry was closed by the enquiry officer.

The enquiry officer has maintained the entire proceeding file in English language. Though the workman has signed in English in the notes sheets, yet there is nothing in record to presume that he put such signatures after understanding the contents. The enquiry officer has not endorsed that he readover or explained the contents of the minutes and the statements dated 19-11-87 and 1-1-1988. Keeping in view the conduct of the enquiry officer during the enquiry (as per the preceding sub-paragraphs), absence of such endorsement by the enquiry officer gives rise to a reasonable presumption that workman's signatures have been obtained without explaining to him the contents thereof. While recording his evidence the Tribunal had the opportunity to know the attitude and standard of intelligency of the workman. He appeared to be a rustic simple man with no intelligency at all. Be that as it may, the above lacuna in the proceeding if properly perceived or visualised, is no less an important circumstance in the matter which goes against the management.

The enquiry officer has not recorded the reason as to why he revived the enquiry again on 1-1-88. In that connection, there is nothing in the enquiry file or the evidence to disclose the reason. In this revived phase of enquiry additional materials were brought into the record.

Each of the above circumstances individually display the unfairness and gross violation of the principle of natural justice in the domestic enquiry.

13. A mere reading of the evidence and the enquiry report (in the domestic enquiry file) it appears to the mind that the enquiry report suffers from perversity. With a view to be brief, only one portion of the report is discussed to show how the report is infested with perversity. In paragraph-4 at the concluding page of the enquiry report the enquiry officer has recorded the finding that—

"During the statement of the A.W., he said that this type of negligency in work he will continue if the management give him again the post of loader".

On perusal of the statement of the A.W., recorded by the enquiry officer, this Tribunal does not find any such statement to have been made by the workman. Apart from that, the evidence of the departmental witnesses were not properly considered and only with a view to record the findings in support of the charges, the enquiry officer picked and choosed statements and went on recording the findings even on matters for which no specific charges were made. In that connection, a comparison of the facts in the charge sheet and the statements of the departmental witnesses is sufficient and the same need not be repeated here to over burden this award with a few more pages.

14. The aforesaid perverse findings of the enquiry officer on the basis of an illegal enquiry, did not see the eye of scrutiny of the Project Officer who passed the order terminating the service of the second party. In other words, the disciplinary authority mechanically endorsed his approval to the enquiry report which is perverse.

Thus, the order of termination on the basis of the illegal and improper domestic enquiry is found unjustified and non-sustainable.

15. As an alternative to the domestic enquiry, the management has led the evidence in the Tribunal to prove the allegation in the charge sheet (Ext. 2). M.W. Nos. 1 and 2 have been examined to prove the charges. M.W. No. 1 Narayan Chandra Das has stated in his evidence that since 1979 he is working as Munshi and his duty is to take the attendance and to allot work to the Loaders and he knows the workman who worked as a Loader. He has further stated that on 9-10-87 and 19-10-87 the workman left the place of work without completing the work on 13-10-87 reported to duty at 2 A.M., though shift started at 11 P.M. The M.W. No. 2 Subrat Chakravorty has stated in his evidence that he is the Shift In-charge and he submitted the report, Ext. 1 (which is also Court's Ext. 1/a) for leaving the place of work before time and that on that basis the workman was charge-sheeted (Ext. 2). He has further stated that the measurement register, Ext. 6 shows that on 9th, 12th, 15th and 19th October '87 the workman did less work and on 13-10-87 though he came to place of work but he did not work. In cross-examination he has stated that for leaving the work place on 9-10-87 he warned the workman, on 12-10-87 he had permitted the workman to go. It reveals from Ext. 6 that on the alleged dates he loaded 1 tonne save and except on 10th when he had loaded 1.50 tonnes. It also reveals that on 8-10-87 he had loaded 2.12 tonnes. Ext. 6 mentions about the work done by 9 loaders vide Sl. No. 28 to 36 and it goes to show that other workers also had done less than 2 tonne loading on various occasions. Ext. 6 does not show time of arrival and departure. It reveals from the domestic enquiry file that 'C' form Register is being maintained to note the time of attendance and departure. That document is not produced to prove the allegations. Apart from that, it further reveals from statement of M.W. No. 2 which he gave in the domestic enquiry that on 9-10-87 he was on leave and he had not come to the place of work. The M.W. No. 1 does not say that on 9-10-87 and 19-10-87 the workman left before time. On the other hand,

his allegations are otherwise i.e. regarding non-completing the work. On 12-10-87, as per M.W. No. 1, he permitted the workman to go. Thus, so far those three dates are concerned, the management is not consistent in alleging the fact and proving the same. The discrepancy in Exts. 1 and 2, which has already been discussed in a preceding paragraph is also relevant at this sequence in the same manner. So far as 13-10-87 is concerned, it is not alleged that the workman is guilty of coming late to the place of work. On the other hand, the evidence of M.W. No. 1 read with evidence of the workman as W.W. No. 2 goes to show that on 13-10-87 no work was allotted to him on the ground that he reported at late hours. Under such circumstances, when no work was provided to him, the workman cannot be held guilty of the charge that on 13-10-87 he left the place of work without doing any work.

16. The above discussion of evidence in record goes to show that the management has not been able to bring home the charges in the charge sheet, Ext. 2 through the evidence adduced in this Tribunal. Thus, the order of termination of service of the workman is unjustified and not sustainable.

17. Issue No. 2 :

To what relief, if any, the workman is entitled ?

In view of the aforesaid finding on Issue No. 1 in favour of the workman and against the management, the matter is to be considered relating to what should be the proper relief. As it appears from the facts and circumstances of the case and from the evidence of both the parties that the trouble started when the prayer of the workman to regularise him as a Mazdoor was not favourably considered because of his less number of years of service as a Loader. Since the finding on issue No. 1 entitles him to reinstatement in service, therefore, for the purpose of counting his seniority the entire period between the date of termination and the date of reinstatement be counted towards his service period without any break. As the workman was working as a piece rated worker, therefore, while passing the award for reinstatement in service, it would not be proper to pass an award for back wages but in its place the workman is granted a consolidated compensation of Rs. 10,000 (Rupees ten thousand) keeping in view the over all facts and circumstances involved in the case. The issue No. 2 is answered accordingly.

18. As per the aforesaid discussions and findings, the Award is passed to the effect that the termination of service of the workman with effect from 2-4-88 is neither legal nor justified and the workman is entitled to reinstatement in service, continuity in service period in the aforesaid manner and besides that he is entitled to a compensation of Rs. 10,000 (Rupees ten thousand) and the terms of the award be implemented within a period of two months from the date of publication of the Award, failing which the workman will be at liberty to approach the appropriate forum for proper relief besides being entitled to compound interest @ 12% per annum on the aforesaid compensation amount.

Dictated and corrected by me.

P. K. TRIPATHY, Presiding Officer

नई दिल्ली, 10 मार्च, 1995

का.आ. 944 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, एम.सी. एल. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 8-3-95 को प्राप्त हुआ था।

[सं. एल-22012/309/93-आई आर (सी-11)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 10th March, 1995

S.O. 944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Bhubaneswar as shown in the Annexure in the industrial dispute between the employers in relation to the management of M. C. Ltd. and their workmen, which was received by the Central Government on the 8-3-1995.

[No. L-22012/309/93-IR(CII)]

RAJA LAL, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR
PRESENT :

Sri P. K. Tripathy, M.A. I.L.B.,

Presiding Officer,

Industrial Tribunal,

Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 6 OF 1994

(CENTRAL)

Dated, Bhubaneswar, the 21st February, 1995

BETWEEN

The management of M/s. Talcher Area of

Mahanadi Coalfields, P.O. Dera,

Dist : Dhenkanal. ... First party-management.

AND

Their workmen represented through

Oriasa Coalfields Labour Union,

At P.O. Deulbera, Dist : Dhenkanal.

.. Second party-workmen.

APPEARANCES :

Sri R. S. Sharma, Dy. Personnel Manager,—For the first party management.

Sri T. Tigga, Vice President of the Union,—For the second party workmen.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No.-I 22012/309/93IR(C.II) dated 27-1-1994:—

"Whether the demand of the Union that the workers mentioned at Annexure-A1 of letter dated 10-4-92 of the Union should be regularised in the post in which they are claimed to be working is justified? If so, to what relief the workmen are entitled to?"

2. Today being the date fixed for settlement of issues, the representatives of both the parties by filing a joint petition alongwith a memorandum of settlement drawn up in Form-'H' prayed to pass an Award in terms of the settlement arrived at between them. The terms of the settlement are readover and explained to the parties to which they admit to be true and correct. The terms being fair, the settlement is recorded. In view of the settlement, an Award is passed in terms thereof which do form part of the Award.

Dictated & corrected by me.

P. K. TRIPATHY, Presiding Officer

FORM—'H'

(Sec Rule—58)

INDUSTRIAL DISPUTE (CENTRAL) RULE—1957
MEMORANDUM OF SETTLEMENT

RFPRESENTING the Management :

Dt. 21-02-1995

Place : Bhubaneswar

Representing the Union

1. Sri R. S. Sharma

(1) Sri T. Tigga.

SHORT RECITAL OF THE CASE

The OCLU Union submitted a statement of demand containing different nature of cases of 85 persons. The Union

demand that these 85 persons are performing higher nature of job at Deulbera and they should be regularised into those posts. The Union without seeing the suitability/unsuitability, eligible/non-eligible cases claiming the regularisation. But during these period the promotion/regularisation/upgradation cases were under process and were under active consideration of the management. Some cases were even completed during the period the Union raised dispute.

After being made failure in conciliation the matter was referred to Industrial Tribunal, Orissa, Bhubaneswar, for adjudication.

Out of the 85 cases there are some cases which do not relate to Deulbera Colliery of Talcher Area.

The cases which have been taken up considered and completed are given below :—

Sl. No.	Description	Sl. No. of the cases as per list	Total No. of cases
01.	The difference of wages are being paid of the present designation & the designation of the job being done by the workers. By April 95 the cases will be regularised/promoted.	Sl. No. 3, 4, 5, 6, 7, 8	05
02.	Regularised, Upgraded to the next higher grades.	Sl. No. 12, 13, 14, 19, 20, 37, 40, 47, 63, 64, 67, 68, 69, 71, 72, 74, 75, 76, 77, 79, 80, 85.	22
03.	Regularisation done	Sl. No. 16, 17, 18, 22, 23, 24, 32, 33, 34, 35, 36, 39, 42, 43, 44, 48, 50, 57, 58, 59, 60, 61, 62, 65.	24
04.	Regularisation/Promotion done.	Sl. No. 1, 46, 49, 51, 53, 54, 55, 83, 84.	09
05.	Retired/, Superannuated/died.	Sl. No. 21(R), 29(D), 30(S), 31(S), 38(R), 52(R), 73(R), 78(R).	08
06.	Transferred	Sl. No. 15	01
07.	Cases do not relate to Deulbera Colliery	Sl. No. 9, 10, 11	03
08.	The rest 13, cases at Sl. No. 2, 5, 25, 26, 27, 28, 41, 45, 56, 66, 70, 81, 82, will be considered as per eligibility, suitability and availability of sanctioned vacancy.		

TERMS OF SETTLEMENT

नई दिल्ली, 15 मार्च, 1995

1. The promotion, regularisation, upgradations etc. is a regular & continuous process which goes on regularly.
2. The eligible cases will be considered for promotional regularisation/upgradation subject to suitability and sanctioned vacancy.
3. This is full and final settlement in regard to this dispute. No parties including the workman individually or through any union will raise any dispute in this regard.
4. So far regularisation is concerned the above table clarifies the position.
5. In view of the above it is requested that an award may be given in I.D. Case No. 6/94(C) in terms of settlement.

का.आ 945 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद, बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, 2 मम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एन-12011/26/85-डी-IIए/आई आर (बी-2)]

बी.के. शर्मा, डैस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government In-

(T. TIGGA)
VICE-PRESIDENT,
ORISSA COALFIELDS
LABOUR UNIONS,
DEULBERA COLLIERY.

(R. S. SHARMA)
Dy. PERSONNEL MANAGER,
TALCHER AREA.

Industrial Tribunal-2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on 15-3-1995.

[No. L-12011/26/85 DIIA/IR(B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, BOMBAY

PRESENT:

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/61 OF 1987

Employers in relation to the management of Allahabad
Bank, Bombay.

AND

Their Workmen.

APPEARANCES:

For the Employers : Mr. M. Pillai Advocate.

For the Workmen : Mr. R. S. Pal Advocate.
Bombay, dated 10th February, 1995

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter no. L-12011/26/85-D.II(A) dated 3-12-87 has referred to the following industrial dispute for adjudication:

SCHEDULE

"Whether the action of the management of Allahabad Bank in not filling up a vacancy of Officer Head Cashier at Fort Bombay Branch was justified? If not, whether the senior most Head Cashier in E-category was entitled to get promotion for posting or not? If so to what relief the workman senior-most Head Cashier Category 'E' for posting to Fort Branch, is entitled?"

2. There are three types of categories of Head Cashiers/Cashier Incharge in different branches. The categories are category 'E', category 'A' and Category 'C'. The branches with more than 100 Lakhs deposit Category 'E' is appointed and in branches with deposits less than 100 Lakhs and more than 50 Lakhs category 'C' is appointed and in branches with deposits less than 50 lakhs category 'A' is appointed.

3. The branches of the Bank situated of Fort, Kalbadevi in Bombay and at Lakshmi Road, Pune are treated as branches accepting large case deposits. In these branches the Officer Head Cashier are posted. In all the other branches the Bank uses the post of head cashier and in such category depending upon the nature of the Bank and nature of the branch depending upon its capacity of deposits.

4. In the year 1983, the Officer Head Cashier was posted in the Fort Branch of the Bank. That was also the case in the Kalbadevi branch and the Pune branch. One Mr. E.R. CAMA who was working as Officer Head Cashier at fort branch retired in the year 1983. Shri Bathena Officer Head Cashier was posted at that place as the Head Cashier violating the rules and practices relating to appointment of Officer Head Cashier.

5. For the post of Officer Head Cashier seniormost cashier in that category on the basis of seniority was appointed. As the Bank violated the rules and practices of appointment the union went on strike on 17-4-84. A negotiation took place between the parties and a settlement was reached on or about 18-5-1984. It is averred that at that time the management said that in all exceptionally large branches the Head Cashier category will be provided according to the norms and exceptionally big level Officer Head Cashier would be posted in the cash department.

725 GI/95-3.

6. The union asserted that the practice of appointing Officer Head Cashier in the aforesaid branch had been dis-regarded by the said settlement. The promotion in the cash department was initially provided by the rules in Settlement dated 24-9-1968. On 11-1-1975 another settlement took place and superceded the earlier settlement. It is averred that in the said settlement also the practise of appointing the Officer Head Cashier by the Bank continued. Infact the said settlement did not disurb the system of appointing Officer Head Cashier in the branches. The Officer Head Cashier in exceptionally large branches who were working at that relevant time of settlement continued to work there. On January 22, 1983 another settlement took place superceding the earlier. Even at that time Officer Head Cashier were working in those exceptionally large branches. It is asserted that in those branches only the Officer Head Cashier was posted and in other branches Head Cashier were posted in category 'E'. As and when the post of Officer Head Cashier arises in the said branches the seniormost Head Cashier in the respective areas are forwarded to the post of Officer Head Cashier.

7. In all these circumstances, the union objected the posting of Bathena after the retirement of Cama. After the settlement dated 18-5-1984 the union approached the management for appointment of and filling up the post of Officer Head Cashier in fort branch. So also was the case in Kalbadevi branch, Bombay. The management did not comply with the same.

8. On 17-12-84 a circular was issued by the management inviting applications from Cashier incharge category 'C' for promotion to the post of Head Cashier category 'E' at fort branch, Bombay. Thus the Bank deliberately violated the practise of appointing Officer Head Cashier. It also ignored the settlement dated 18-5-1984. The union thereafter made a demand with the Assistant Labour Commissioner, Bombay who called upon the management to submit its say. But nothing was placed before the Assistant Labour Commissioner and ultimately he sent a failure report to the Central Government declining to refer the dispute raised by the union for adjudication to the Industrial Tribunal. Being aggrieved by that the union filed writ petition and got the order from the High Court to refer the dispute, to the Tribunal.

9. The union contended that the provisions of section 9A of the Industrial Disputes Act has been violated by the Bank.

10. The union prays that the reference may be answered in his favour with other reliefs as a nature of the circumstances of the reference required.

11. The management resisted the claim by their written statement exh. 3. They accepted that initially the exceptionally large branches appointed the Officer Head Cashier. But, after the said settlement no such Officer Head Cashier was appointed. It is asserted that at the time of the settlement those Officer Head Cashier were working in the exceptionally large branches. It continued to be so. But after their retirement as per the promotion policy the postings were done. It is averred that it is the non-violation of any existing practice. It had not violated the principles of the section 9 of the Industrial Disputes Act of 1947 and the agreements signed with the parent organisation of the local unit on 11-1-1975 and 18-5-1984 for the open implementation in the right perspective. It is averred that the settlement which happened to have taken place before the Labour Commissioner dated 18-5-1984 was in different words and not as alleged by the union.

12. The management contended that for the posting of Officer Head Cashier there are tests and one cannot get such a promotion only on the basis of seniority which the union wants to do. It is submitted that there is no automatic promotion from Head Cashier category 'E' to the Officer Head Cashier which post does not exist at all in the industrial settlements made by the parties. It is prayed that under such circumstance the claim may be rejected.

13. My Learned Predecessor framed issues at exh. 4. The issues and my findings thereon are as follows :

Issues	Findings
1. Whether the action of the management of Allahabad Banking not filling up a vacancy of Officer Head Cashier at Fort Bombay Branch was justified ?	YES
2. If not, whether the senior most Head Cashier in E-category was entitled to get promotion for posting or not?	Does not survive
3. If so to what relief the workman Seniormost Head Cashier category 'E' for posting to Fort Branch is entitled ?	Does not survive
4. Whether the promotions are being given to the Bank employees as per the different settlements between the Bank Management, and the Union of the workmen ?	YES
5. What Award ?	As per order below

REASONS

14. Mr. Sapal Sorabji Pastakia (exh. 5) and Mr. Phiroze N. Patel (exh. 8) affirmed pertaining to the statement of claim. According to them in exceptionally large branches such as Fort, Kalbadevi in Bombay and Lakshmi Road in Pune the Officer Head Cashier used to be appointed. After the date of retirement of Cama in 1983 from the Fort branch the management continued with the existing practise of appointing the Officer Head Cashier in those branches. They affirmed that for the appointment of the said post the cashier from category 'E' was considered for the post of Officer Head Cashier and the seniormost person was considered, to be eligible for the post.

15. Mr. Mangesh M. Pisat and Mr. Gupta (exh. 13) the Senior Manager affirmed that the post of Officer Head Cashier is not existing in view of the Bipartite Settlement and that different settlements have taken place between the management and the union.

16. It is not in dispute that the Fort Branch and Kalbadevi branch, Bombay and the Lakshmi Road branch Pune are exceptionally large branches. They are called so on the basis of the large deposits with them. From the testimony of these witnesses it is not in dispute that prior to 1983 the Officer Head Cashier were appointed in those branches. The eligible candidates were promoted from Cashier category 'E' to that post. The Cashiers in different categories namely 'E', 'C' & 'A' were used to be posted on the basis of the deposits with the Banks in those respective branches.

17. After the retirement of Cama a man from Pune was brought to the Fort branch, Bombay. Then the union resisted his posting and went on a strike. The matter was before the Assistant Labour Commissioner Bombay and a settlement took place before him, which is at exh. 7 dated 18-5-84. Para 1 & 2 of the same reads as follows :

1. In all exceptionally Large Branches Head Cashiers Category 'E' shall be provided according to the provisions of the Promotion Policy.
2. In some much identified branches, if need be, Officer may be posted in Cash department subject to discussion and finalisation of posting of such officer in Cash Department either on promotion from amongst the Head Cashiers Category 'E' or otherwise in the next negotiation.

18. From the perusal of these settlements it cannot be said that the management accepted the position of posting the Officer Head Cashier from category 'E', the discretion was vested with the management. It can be further seen

that there was a settlement between the parties. The union is a subsidy union of the All India Allahabad Bank, Employee co-ordination committee. The settlements entered on 11-1-75 and thereafter on 22-1-83 are binding on the union. After the perusal of the settlement it can be seen that there is no post such as the Officer Head Cashier to be posted in the exceptionally large branches. It can be further seen that these are rules for the promotion to the category of Officers as narrated in part V-1 (Annexure 8). In other words the person who is working as a Head Cashier category 'E' cannot be promoted to the post of Officer on the basis of his seniority in that area. For getting such a promotion, he has to pass certain examination and interviews and the other requisite requirements as enumerated in the settlement.

19. It is tried to argue on behalf of the union that in those settlements there is no mention that such post are removed. In the other words it is tried to suggest that even though the settlement had taken place the post of Officer Head Cashier in exceptionally large branches continue to be there. I am not inclined to accept it. The reason is that in these settlements there is no post of Officer Head Cashier. From the different posts narrated and the procedures as given those posts are to be filled up. It can be further seen that after the coming into operations of these settlements the post at those exceptionally large branches were filled up on the basis of these settlements. These posts were filled up only after the retirement at the Fort branch and after the death of the Officer Head Cashier of the Kalbadevi branch, Bombay. The management has then got the right to fill up this post as per the settlement. There is no illegality or irregularity in it.

20. The Learned Advocate for the union placed reliance on Tata Iron & Steel Co. Ltd. and the workmen 1972, II L.J., page 751. In that TISCO changed the weekly rest days from Sunday to some other day and in non-complying with sec. 9A read with the fourth schedule of the Industrial Disputes Act. Their Lordships have observed that such a change is without complying with section 9A of the Industrial Disputes Act. On the basis of the principles laid down in the above said authority it is tried to argue that the service conditions are changed without giving proper notice to the concerned parties and therefore it is not acceptable. This argument cannot be accepted because in view of the settlement dated January 22, 1983 and on the basis of the earlier settlements also it cannot be said that such a change is effected. For the appointment as Officer Head Cashier in the exceptionally large branches is changed. It does not violate the provisions of section 9A of the Industrial Disputes Act. For all these reasons I record my findings on the points accordingly and pass the following order :

ORDER

1. The action of the management of Allahabad Bank in not filling up a vacancy of Officer Head Cashier at Fort Bombay Branch was justified.

2. No order as to costs.

10-2-95

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का.आ. 946 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. शारन कोलिंग कोल लिमि. की मनीडीह कोलियरी के प्रबन्धन के संबद्ध निधोजकों और उनके कर्म-कारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं.-1), धनवाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एन-20012/65/93-आई आर (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Moonidih Project of M/s. BCCL and their workmen, which was received by the Central Government on 15-3-95.

[No. L-20012/65/93-IR(Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2A) of the Industrial Disputes Act, 1947.

Reference No. 73 of 1994

PARTIES :

Employers in relation to the management of Moonidih Project of M/s. BCCL.

AND

Their Workmen

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—None

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 28th February, 1995

AWARD

By Order No. L-20012/65/93-IR. (Coal-I) dated 16-3-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Moonidih Project of M/S. BCCL, P.O. Moonidih, Dist. Dhanbad in dismissing Shri Sarak Bhuiya from the services of the company with effect from 22-6-92 is justified? If not to what relief the workman is entitled?"

2. The order of reference was received in this Tribunal on 4-4-1994. Thereafter two registered notices were sent to the sponsoring Union to file the written statement. But neither the sponsoring Union nor the concerned workman appeared and filed written statement. Even on 23-2-1995 no one was present on behalf of the sponsoring Union. It, therefore, appears that neither the sponsoring Union nor the concerned workman is interested to pursue the case.

3. Therefore, I render a 'no dispute' award in the present reference case.

P. K. SINHA, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का.आ. 947 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार, सं. भारत कोकिंग कोल लिमि. का कोयला भवन

के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एल-20012/204/93-आई आर (कोल-1)]
ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/S BCCL, Koyla Bhawan and their workmen, which was received by the Central Government on 15-3-95.

[No. L-20012/204/93-IR(Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947.

Reference No. 68 of 1994

PARTIES :

Employers in relation to the management of M/s. Bharat Coking Coal Ltd., Koyla Bhawan.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers—Shri S. N. Sinha, Advocate.

For the Workmen—None.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 28th February, 1995

AWARD

By Order No. L-20012/204 93-IR. (Coal-I) dated 24-3-94 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of the M/s. BCCL at & P.O. Koyla Nagar, Dist. Dhanbad in dismissing Shri Ram Chandra Nonia from the services of the Co. w.e.f. 4-1-1992 is justified? If not, to what relief the workman is entitled?"

2. The order of reference was received in this Tribunal on 4-4-1994. Thereafter notice was sent to the sponsoring Union to file the written statement. Since no one appeared on behalf of the sponsoring Union again registered notice was sent to it which was duly delivered. But none appeared nor filed the written statement. Even on 21-2-95 no one was

present on behalf of the sponsoring Union. It, therefore, appears that the sponsoring Union is not interested in pursuing the present industrial dispute or that it has now no dispute with the management.

3. Therefore, I render a 'no dispute' award in the present industrial dispute.

P. K. SINHA, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का.मा. 948. :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में केन्द्रीय सरकार, मै. सेंट्रल कोलफील्ड्स लिमि. की कथारा वाशरी के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं० I), धनबाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-5-3-95 को प्राप्त हुआ था।

[संख्या एस-20012/152/89-आई धार (कोल-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Kathara Washery of C.C.L. and their workmen, which was received by the Central Government on 15-3-1995.

[No. L-20012/152/89-IR(Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947.

Reference No. 10 of 1990

PARTIES :

Employers in relation to the management of Kathara Washery of C.C.Ltd.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. S. Murthy, Advocate.

For the Workmen—Shri M. K. Sengupta, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 2nd March, 1995

AWARD

By Order No. L-20012/152/89-I.R. (Coal-I) dated 10-1-1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec.(1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Kathara Washery of C.C.Ltd., P.O. Kathara, Dist. Giridih by not promoting S/Shri (i) Rajpati Prasad (2) A. K. Banerjee (3) Pan Babu Ansari (4) B. N. Mukherjee (5) Sattar Ansari; and (6) Samshad Ahmed Khan from Welder Cat. V to Welder Cat. VI (Gr. I) w.e.f. 20-11-81 at par to Shri Kamaluddin and not making payment of all the benefits occurring thereupon is justified? If not, to what relief the workmen concerned are entitled?"

2. The dispute has been settled out of the Tribunal. A memorandum of settlement has been filed in this Tribunal. I have gone through the terms of settlement and I find those to be fair and reasonable. I allow the prayer and render award in terms of settlement. The memorandum of settlement shall form part of this award.

3. Let a copy of this award be sent to the Ministry as required under Sec. 15 of the Industrial Disputes Act, 1947.

P. K. SINHA, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

Reference No. 10/90

PARTIES :

Employers in relation to the Management of Kathara Washery of Central Coalfields Ltd., P.O. Kathara, Distt, Bokaro.

AND

Their Workmen

JOINT COMPROMISED PETITION OF THE EMPLOYERS AND WORKMEN.

The abovementioned employers and the workmen jointly beg to submit most respectfully as follows :—

(1) That, the dispute covered by the above reference was mutually negotiated between the Management and Workmen with a view to arriving at mutually acceptable and amicable settlement and as a result, both the parties have agreed to settle the matter as per the following Terms and Conditions :

(a) It is agreed that S/Shri Rajpati Prasad, A. K. Banerjee, Pan Babu Ansari, B. N. Mukherjee, Sattar Ansari and Samshad Ahmed Khan would be notionally placed by the Management in Daily Rated Cat. VI with effect from 20-11-81 (i.e. the date from which date Sri Kamaluddin was placed in Cat.VI) but with no financial benefit, but only Notional Seniority above Sri Kamaluddin and the inter-se Seniority of these 6 (six) workmen would remain based on the date of their Promotion to Cat. V.

(b) It is agreed that thereafter these 6(six) workmen concerned would be given the benefit of Para 2.11 of NCWA-IV w.e. from 01-7-92 i.e. from the date such benefit was given to Sri Kamaluddin. These 6 (six) workmen would have the benefit of Notional Seniority above Sri Kamaluddin, but they will not be entitled any financial benefit on this account prior to 1-1-94.

(c) It is, further, agreed that the above 6(six) workers concerned would be given the benefit of Para 2.11 of NCWA-IV with financial benefit from 1-1-94 and they would accordingly be paid the arrears of difference of wages from 01-01-1994. In other words their basic wages will be raised to the same level as Sri Kamaluddin in the Pay Scale of Tech. & Supry. Gr. C at Rs. 1966 per month. The next date of their increment would be the same as of Sri Kamaluddin.

(d) It is agreed that this is an over-all settlement in full and final settlement of all the claims of the workmen concerned arising out of the above reference.

(2) That, the employers and the workmen hereby jointly confirm and declare that they consider the aforesaid terms of settlement as fair, just and reasonable to both the parties.

In view of the above, the employers and workmen jointly pray that Hon'ble Tribunal may be pleased to give an award in terms of the above settlement and dispose of the reference.

B. N. Prasad
Secy.,
Koyla Mazdoor Union
Kathara Branch,
P.O. Kathara, Dist. Bokaro
For and on behalf of the
Workmen.
Date : 23-2-95.

Project Officer
Kathara Washery
C.O., Kathara Area,
For and on behalf of
employers.
(Lakhan Prasad)
Addl. CPM(KTA)
C.O., Kathara Area,
For and on behalf of
employers.

Part of the Award

नई दिल्ली, 15 मार्च, 1995

का.प्र. 949 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ़ इंडिया के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निरोद्ध औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एल-12011/30/89-डी-II-ए/आई आर (वी-II)]

वी.के. शर्मा, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 15th March, 1995.

[No. L-12011/30/89-D.II.A/IR(B-ID)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT:

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/42 of 1989

Employers in relation to the Management of Bank of Baroda

AND

Their Workmen.

APPEARANCES:

For the Employers—1. Mr. R. B. Pitale, 2. Mr. L. L. D'Souza, Representatives.

For the Workmen—Mr. M. G. Satavalekar Representative.

Bombay, dated the 8th February, 1995

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter No. L-12011/30/89-D.II(A) dated 26th September, 1989 referred to the following schedule for adjudication.

SCHEDULE

"Whether the action of the management of Bank of Baroda in relation to the Pune Branches in not assigning the duties of Electronics Accounting Machine Operators and Data Entry Operators to the workman according to the Seniority in terms of settlement dated 18th April, 1984 is justified? If not, to what relief is the workman entitled?"

2. The All India Bank of Baroda's Employees Union have filed the statement of claim. It contended that on September 8, 1983 a settlement was entered into between the India Banks Association where by the Bank was allowed to utilise Accounting Machines, electric or electronic, other than computers for such purposes as specified therein. The clause IX of the said settlement provided that till such time that the special allowance payable to the new categories of employees, who were appointed as introduction of computers, for performance of higher level duties then envisaged in the settlements then existing, such new categories of employees would be paid special allowance payable to A.M.O.'s. At that time the special allowance payable to AMO's were Rs. 216 p.m. and for the Head Cashier Category 'C' was Rs. 275 p.m.

3. On 18th April, 1984 the Bank signed a settlement with workmen which lays down the criteria for reckoning seniority for the purpose of assignment of duties attracting special allowances payable on the basis of seniority. On 18th May, 1985, the Bank had set norms for selection of AMO's by a circular where by the selection was to be made on the basis of the city-wise seniority.

4. The Bank had initiated the instalment of the Bank's Advance Ledger Posting Machines (ALPC) Electronic Accounting Machines (EAM) in terms of the settlement dated 8th September, 1993. On 19th May, 1985 the Chief Manager (Computer management Services) issued a circular by which duties of F.A.M.O.'s were to be assigned to the then existing A.M.O.'s first and then to the seniormost clerical staff members, who had applied for the same, on the basis of the city-wise seniority. At that time the special allowance payable to the A.M.O.'s and E.A.M.O.'s was Rs. 216 p.m.

5. In terms of the guidelines as aforesaid, the Regional Manager (Pune Region) issued a circular dated 11-11-86 inviting applications from clerical staff for assignment of

E.A.M.O's duties. On 29-3-87 the India Banks Association and the workman entered in to a further agreement on the industry level which produced special allowance of Rs. 350 p.m. for E.A.M.O's and it was made payable and w.e.f. 1-9-1986.

6. The union by its letter dated 10th September, 1987 addressed to the Regional Manager brought to his notice in view of the fixation of special allowance of Rs. 350 p.m. as the aforesaid post of E.A.M.O's/A.L.P. need to be filled in accordance with the provisions of the settlement dated 18th April, 1984 from among all eligible workmen including all those drawing any special allowance lower than Rs. 350 p.m. It is also brought to the notice of the management that by not offering the post in this manner the senior workmen are made to draw a lower special allowance.

7. Mr. Godse the member of the union and the Head Cashier category 'C' by his representation dated 17th May, 1988 addressed a letter to the Regional Manager and submitted that he had not applied for E.A.M.O's post in response of the Bank's earlier circular as he was drawing special allowance of Rs. 275 p.m. which was more than special allowance of that post. As that allowance is increased to Rs. 350 his claim for E.A.M.O's post created thereafter in terms of the city-wise seniority should be allowed to him.

8. The Bank however did not accede Mr. Godse's claim and in result the union approached the Assistant Labour Commissioner (Senior) Pune. The Commissioner tried to resolve the dispute but due to the non-co-operation of the management he send his regative report resulting in the present dispute, reference.

9. The union says and submits that foregoing being the position, the action of the Bank in issuing the circular dated 19th May, 1986 and thereby tendering preferential treatment to the then existing A.M.O.'s was presumptuous, unilateral and violative of the agreement dated 18th April, 1984. In fact, the said circular was ab-initio void and bad in law. That the majority union lent its acquiescence to the said circular would not make it legal.

10. The union prays that the circular dated 9th May, 1986 issued by the Chief Manager is void in view of the agreement dated 18th April, 1984 of the dues of the E.A.M.O's duties. The Bank be directed to fill up the vacancies as per the agreement dated 18th April, 1984 and to appoint Godse E.A.M.O. w.e.f. 29th March, 1987.

11. The management by its written statement exh. 4 denied the claim of the union. It is asserted that the majority union having community of interest alone can espouse the cause of the workman and not a minority union. It is pleaded that the industrial dispute as contemplated under section 2(k) of the Industrial Disputes Act is not existing between the Bank management and its workmen therefore the reference is without any merit.

12. The management pleaded that the guidelines of the duties of the Special Assistant were issued by the Chief Manager. It was issued on the basis of the understanding arrived between the majority union and the management. It was agreed thereafter that the City-wise seniority is to be given for giving any of the post of special allowance. Thereafter the applications were invited for the post. The persons who were working as AMO's were to be given promotions for the E.A.M.O's post and at the relevant time seven posts were available and they were given accordingly. Out of them one of the posts holders was the member of the union.

13. The management asserted that the settlement at the industrial level arrived was on 29th March 1987. In view of the said settlement the AEM Operators shall be taken from amongst the staff. In view of the terms with the existing settlement i.e. policy reached with the All India Bank of Baroda Employees Federation which is a recognised union as per the earlier arrangements. Clause 12 of the said Settlement allowed the individual Banks even during the

period of the settlement to continue with an existing understanding/settlement or to enter into any fresh understanding to fill up the post. It is submitted that in May 1988 as a result of need of Additional AEM at Karve Road branch two more vacancies were installed and application were invited for the said post and as per the norms set, those posts were given to the eligible candidates. Mr. Godse was not eligible and hence the post was not given to him. But now as per the seniority rules he is given that post, w.e.f. 2nd July, 1990 at the Bank's station road branch, Pune.

14. The issues were framed and are at exh. 4.

15. I heard the arguments of the parties in the matter. I gave the direction to add the majority union as a party to the present reference 15th September, 1985.

16. The majority union filed its claim at exh. 24 for which the union filed its rejoinder at exh. 30. It is informed to the Tribunal that majority union does not want to lead any evidence in the matter and supports the case of the management.

17. The issues and my findings thereon are as follows :

Issues	Findings
1. Whether the union in question i.e. The All India Bank Employees' Union is competent to espouse the cause in question ?	YES
2. Whether an industrial dispute as contemplated under section 2(k) of the Industrial Disputes Act exists between the Bank management and its workmen ?	YES
3. Whether the circular dated 19-5-1986 issued by the Chief Manager (Computer Management Services) is ultra vires the agreement dated 18-4-1984 ?	NO
4. Whether Shri Godse is deemed to be E.A.M.O. w.e.f. 29-3-1987 and is entitled to all consequential benefits.	NO
5. Whether the action of the management of Bank of Baroda in relation to its Pune branches in not assigning the duties of Electronics Accounting Machine Operators and Data Entry Operators to the workmen according to seniority in terms of the settlement dated 18-4-1984 is justified.	YES
6. If not, to what relief is the workman entitled	Does not arise
7. What Award	As per order below

REASONS

18. It is not in dispute that the disputing union is a registered union. The workman Godse is a member of this union and not only that he is an Office Bearer. Section 37(7)(G) provides that the workman who is the party to this dispute shall be entitled to represent any of the persons for this Act by the Office Bearer of the registered trade union. The General Secretary was authorised by Mr. Godse to represent his case. In fact being the office bearer also he represents the case of the union.

19. Section 2(K) of the Industrial Disputes Act of 1947 provides that the industrial dispute means any dispute or dispute between the employers or between employers and workmen or between the workmen and workmen and it is incurred with the employment or unemployment or with the terms of the employment or with the conditions of labour or any person. The present dispute is between the employees and the workman i.e. between management and the Bank or the union with the terms of the employment of Godse, a member of the union. Therefore, the dispute is an industrial dispute.

20. The management said that the union had no right to pursue the reference. No resolution is produced by the union that all the members have decided to pursue the reference. But it is well settled that when the union is suffering from due to the action of the management then it has to take action. Here in this case the union had refused to pursue the action and had referred to Godse's case before the Labour Court. Then their matter was reported to the Labour Ministry in the form of a negative report from the Commissioner. That clearly goes to show that the union was competent enough to represent Godse's case and the other members pertaining to assignment of the duties of special assistant to the eligible workmen. For all these reasons I find that the All India Bank of Baroda's Employees Federation is a competent to espouse present case.

21. Alvin James (exh. 15 & 16) had affirmed as per written statement filed by the management. As against that there is no oral evidence lead by the union. After perusal of the statement of James nothing has come on the record to shatter the evidence which is lead by him. He had affirmed that the special allowance given to the Head Cashier grade 'C' cannot be equal to AMO, FMO or for that matter with any other post. He further affirmed that the eligibility criteria for the post as per settlement dated 31st October, 1978 and other issues for the purpose of any of dues of Head Cashier grade 'C' is that the employees should be working as the cash clerk or the clerk with the connection of the despatch work of cash clerk and who has given security deposit. Godse was appointed as the Head Cashier in 1981 from the post of cash clerk. At that time there was no grade. In other words the settlement was unchallenged on the basis of the other issues referred in 1978. He had further affirmed that the circular dated 19th May, 1987 was issued on the basis of the understanding reached with its majority union and was in consonance with the provisions of the settlement of the other issues dated 18th April, 1984. He denied the suggestion which was made to him that the said circular was issued and no understanding was in existence.

22. Exh. 8 is a circular dated 19th May, 1986, James had affirmed that this circular is issued on the basis of the understanding with the majority union (exh. 7). It is not in dispute that on 18th April, 1984 a settlement was arrived at which also referred to what is meant by the city-wise seniority. It is pertaining to the appointment of the post of AEM. On 11th November, 1986 after the installation of the different machines the applications were invited for the post of AEM. Admittedly seven AMO's were working were brought to that post out of them one was a member of the disputing union. It is not in dispute that at that time, special allowance to the post was lesser than that of the head cashier. It is also not in dispute that when the new category of AMO's were created in view of the installation of accounting machines, special allowance was paid to them was to the tune of Rs. 260 p.m. At that time the head cashier category 'C' was getting special allowance of Rs. 275 p.m.

23. It appears that on 29th March, 1987 in view of the agreement of industrial level the payment of special allowance of Rs. 350 p.m. for the post of AEMO's was fixed. It came into effect from September 1, 1986. But at that time the special allowance in respect of the head cashier grade 'C' remained lesser than that. The anomaly which was created was that the senior persons were getting less allowance than that of the juniors.

24. From the statement of claim it is very clear that the fixation of the special allowance for the post of new post was of Rs. 350 p.m. and the union had no dispute. But when the amount exceeded than that of the Head Cashier category 'C' the dispute started. It is rightly argued that when the union already accepted that formality for the earlier appointments, it has now stopped from taking the cash which is taken now.

25. In the settlement at the industrial level which took place on 29th March, 1987 the clauses 17 & 22 refers to the appointments of AEMO's. Clause 17 refers to AEM, Operators who shall be the head there which means the union clerical staff members will be the heads as per the order existing and the future policy settlement in different Banks, which shall include the passing of the aptitude test. The existing policy in the Bank was to appoint AEMO's to AMO's first on the basis of the city-wise seniority, and only if there is no. Then the dues of AEMO's are to be taken from clerical staff members on the basis of city-wise seniority.

26. Clause 22 of that settlement gives right to the nationalised banks to continue with the said existing understandings or settlement or to enter into another fresh understanding/agreement/settlement with their representative or recognised union on variance to what is agreed in the settlement.

27. James affirmed that 6th September, 1989 the settlement for selection of ALPM/AEM Operators was signed between the recognised union and the management. It was agreed to continue with the existing practice. It is tried to argue that this settlement has no binding or force. I am not inclined to accept it.

28. The union tried to submit that the guidelines are issued of 19th May, 1986 which are contrary to the settlement dated 18th April, 1982. I am not inclined to accept it. The union accepted the guidelines till the special allowance was increased to Rs. 350 which can be seen from the fact that its members were also given the dues. It can be further seen that in view of the next settlement dated 29th March, 1987 the management was entitled to proceed with the existing criteria for allotment of the posts. It can be seen that the system continued with the agreement of the majority union which was existing. Under such circumstances the action of the management cannot be said to be unjust.

29. Godse made an application to the management but it was not allowed. He was advised by the management to make an application when applications would be invited. At a relevant time he was not given the post because at that time the AMO's who were doing the work were held eligible. When the next occasions for filling up the post arose, Godse was given those duties on the basis of the seniority from among the staff members of the clerical staff. There is no irregularity in the same.

30. So far as the question of decision is concerned, it appears that they started the same after 6th September, 1989. From the evidence discussed above, it is very clear that the circular dated 19th May, 1986 was effective till the date of the settlement that is dated 29th March, 1987. Thereafter another settlement took place between the majority union and the management on the basis of the industrial settlement of 6th September, 1989 and it is perfectly justified. The anomalies which are alleged to be created by the increase of the special allowance to EMO's cannot be decided in this reference. It is rightly argued on behalf of the management that the special allowance varies from post to post and from work to work. For all these reasons I record my findings on the points accordingly and pass the following order:

ORDER

1. The action of the management of Bank of Baroda in relation to its Pune Branches in not assigning the duties of Electronic Accounting Machine Operators and Data Entry Operators to the work-

man according to seniority in terms of settlement dated 18th April, 1984 is justified.

2. No order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का.प्र. 950 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ महाराष्ट्र के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, 2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-85 को प्राप्त हुआ था।

[संख्या एल-12012/276/90-आई एन (बी-2)]
बी.के. शर्मा, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 15-3-95.

[No. L-12012/276/90-IR(B.II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/8 of 1991

Employers in relation to the Management of Bank of Maharashtra.

AND

Their Workmen.

APPEARANCES :

For the Employers : 1. Mr. R. M. Samudra, 2. Mr. R. G. Londhe, Representatives.

For the Workmen : Mr. Vinayak Karmarkar, Representative.

Bombay, dated 9th February, 1995

AWARD

Shri M. S. Bhosle was working as a Daftari at the Swargate Branch of the Bank of Maharashtra i.e. the Opponent. In the month of January-February, 1987 the total strength of the sub-staff of Swargate Branch of the Bank of Maharashtra exceeded ten. Bhosale being the seniormost willing employer was entitled for the post of Hawaldar in that branch. He made an oral request but he was not heard. On February 21, 1987, he made a representation to the management. On July 11, 1987 but the management accepted the representation and allotted him the post of Hawaldar on a temporary basis with reference to his above referred representation.

2. The management in the said appointment letter had mentioned that in view of the said seniority a settlement came into existence on 13-4-87, and this appointment is on a temporary basis. It is contended that the settlement is having a prospective effect and not a retrospective effect. In fact, in view of the circular dated August 5, 1975 the workman is entitled to the post the Hawaldars in the month of January and February, 1987.

3. The union submits that in January-February 1987 the strength of sub-staff at the Swargate Branch exceeded 10 entitling Bhosale to the post of Hawaldar being the seniormost Daftari.

4. On the basis of the above said content on it is pleaded that the management has issued the circular dated March 25, 1988 regarding the post of Head Peon-Hawaldar. In the said circular it is mentioned that it is the reproduction of the then existing guidelines regarding the post of Head Peon/Hawaldar implemented since 1967-68 excepting the criteria of seniority/allotment of the post. It is averred that even though this circular is taken into consideration Mr. Bhosale is entitled to the post of Hawaldar.

5. The union averred that it came to know that the management is going to withdraw the allowance of Bhosale illegally, hence it raised the industrial dispute before the Assistant Labour Commissioner, Pune. The matter was rejected in conciliation. When the conciliation proceedings were pending Mr. Bhosale continued to perform the duties with allowance therefore as per the order letter dated 11-7-87 till this date.

In view of the negative report sent by the Assistant Labour Commissioner the Government of India, Ministry of Labour had sent the industrial dispute for adjudication to the Tribunal in the following terms :

SCHEDULE

"Whether the action of the Management of Bank of Maharashtra in relation to its Swargate Branch in not allotting the post of Hawaldar to Shri M. S. Bhosale keeping in view the circular No. AXI/ST/BPS/43.88 dated 25-3-88 is justified? If not, to what relief the workman is entitled?"

7. The union had proved that it may be declared that worker Bhosale is deemed to be posting as Hawaldar w.e.f. February 1987. He is entitled to special allowance attached to that post w.e.f. January-February 1987 and that the action of the management is not legal with other reliefs.

8. The management resisted the claim by written statement Feb. 3. It is averred that the various posts for which the allowance is required to be paid as a special allowance are stipulated under the Bipartite Settlement. That settlement does not provide for when and where such posts be created. The creation of the post of Hawaldar is absolutely discretionary of the Bank. It is asserted that such type of posts are created in the old branches as per the understandings and on the basis of the circular dated 25-3-88.

9. The management averred that the strength of the sub-staff was not 11 at Swargate branch as alleged by the union. As such, there was no vacancy for Head Peon/Hawaldar. It is submitted that there is no merit in the claim which deserves to be dismissed.

10. The union has filed rejoinder at exh. 5 denying all the averments made by the management. It is averred that the circular dated 25-3-88 is made on the basis of the management's conventions itself. It is submitted that the strength was more than 10 in the Swargate branch at a relevant time and therefore Mr. Bhosale is not entitled for the post of Hawaldar/Head Peon.

11. My Learned Predecessor framed issues at exh. 4. The issues and my findings thereon are as follows:

Issues	Findings
1. Whether the action of the management of Bank of Maharashtra in relation to its Swargate branch in not allotting the post of Hawaldar to Shri M. S. Bhosale keeping in view the circular No. AXI/ST/BPS/43.88 dated 25-3-88 is justified?	Not justified
2. If not, to what relief the workman is entitled?	As per order below
3. What Award?	As per order below

REASONS

12. Both the parties have filed purshises (exh. 5). They do not want to lead any oral evidence.

13. Mr. Bhosale gave the application for the post of Hawaldar/Head Peon on 21-2-87 (exh. 6/2). He gave that application because earlier submissions were not accepted. The management posted another letter to him dated 11-7-87 (exh. 6/3). It is mentioned thereafter that the posting is made on a temporary basis because of the settlement signed on 13-4-87. A settlement was signed before the Assistant Labour Commissioner regarding the citywise seniority.

14. It is argued on behalf of the union that in January and February 1987, at Swargate branch the total number of sub-staff was exceeding 11 entitling him the post of Head Peon. As against that it was submitted on behalf of the management that the strength was not exceeding more than 11 at the Swargate branch where Bhosale was working as alleged. It is therefore the workman is not entitled to the posting as a clerk.

15. Exh. 6/1 is a circular dated 25-3-88 and it is a gist of the present dispute. The reference for this circular is the post of Head Peon/Hawaldar. It begins with:

"There has been understanding between Management and the majority union (AIBE) since 1967-68 in respect of the post of Head-Peon (Hawaldar). However over a period of time there has been tremendous change in the set up of branches/offices of the Bank. The issue was discussed with the majority union on 23-2-88 and minutes of discussion were drawn." The broad guidelines for creation of the post were given, as under:

"While computing the above strength full-time members of sub-staff only, excluding Armed-Guards/Drivers, will be taken into consideration. In case of combined designations such as Peon-cum-Driver, Peon-cum-Watchman/Armed Guard, while counting the strength of full time Sub-staff for creation of Head Peon's Post, the duties performed by such peon-cum-driver, Peon-cum-Watchman/Armed Guards will be taken into account. If such staff sub-staff members are working as relieving Driver or Watchman, these will be counted in the total strength for the said purpose.

16 Exh. 13/10 is a copy of the statement filed by the Bank before the Assistant Labour Commissioner. It gives details as to how to compute the strength of the staff for appointment of Head Peon/Hawaldar. It is as follows:

1. There should be atleast 11 members of subordinate staff.
2. They should be full time employees.
3. The subordinate staff having combined designation, such as Sub-staff-cum-Watchman or Sub-staff-cum-Armed Guard are included while working out the strength of the subordinate staff.

4. The part time employees have been excluded.

5. The subordinate staff having designation such as Armed Guard or driver are also to be excluded for the purposes of working out the strength of sub-staff in this regard.

17. The Letter gives the strength of the sub-staff who were working at the Swargate branch in the month of January and February 1987. At that time there were nine sub-staff, three watchmen, and two part-time workmen totalling to 14. The management had further clarified that out of the three watchman one watchman by name Kbule was appointed as armed guard in the year 1977. His appointment letter is at exh. 6/4 but as he was having a combined duty his strength is taken into consideration while considering the post of Hawaldar. So far as the other two watchmen are concerned they were R. M. Raykar and K. B. Shivale. Mr. Raikar was on probation at that time whereas Mr. Shivale was purely on a temporary basis. According to management both of them therefore cannot be considered and counted for determining the total strength of sub-staff. Under such circumstance the strength comes to ten and in the result Mr. Bhosale was not justified as for the post of Hawaldar/Head-Peon. I am not inclined to accept it. It is because, looking to the circular (exh. 6/2) it is nowhere mentioned that the temporary sub-staff cannot be taken into consideration for counting the number. It is also not mentioned therein that the probation also has not to be taken into consideration. So far as the part-time employees are concerned, they are not to be taken into consideration and therefore the two part-time workmen are not to be considered. But reducing that the strength comes to 12 and which exceeds 11. The result is that in view of the said circular Mr. Bhosale who was a Daftari then was entitled to the post of Hawaldar.

18 It is tried to argue that at that particular time the circular dated 25-3-88 was not in existence. It is therefore non-observance of the same cannot be a matter of the reference. It can be seen that in the said circular only there is the reference of the prevailing system since 1967-68. In other words, it has to be said that whether the claim of Bhosale was denied by the management even though an understanding between the management of the majority union was not existing since 1967-68.

19. On behalf of the management it is tried to argue that Bhosale was given special allowance since his appointment and also he has been posted as a Hawaldar since then and he is doing the work accordingly. Therefore the reference does not survive. There is no justification in this argument. The workman has claimed the benefit of the post of Hawaldar since the date of application. He is entitled to the same for the reasons given above. For all these reasons I record my findings on the points accordingly and pass the following order:

ORDER

1. The action of the management of Bank of Maharashtra in relation to its Swargate Branch in not allotting the post of Hawaldar to Shri M. S. Bhosale keeping in view the circular No. AXI/ST/BPS/43.88 dated 25-3-88 is not justified.
2. The workman Bhosale is deemed to be posted as Hawaldar w.e.f. January-February 1987 and is entitled to the Special Allowance attached to the said post.
3. The management is directed to pay the workman Rs. 300 as cost of the reference.

Dated: 9-2-95.

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का.शा. 951 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक ऑफ महाराष्ट्र के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदोष औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, -2, बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एल-12012/438/90-आई आर (बी-2)]

बी.के. शर्मा, हेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, 2, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 15-3-95.

[No. L-12012/438/90 IR (B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/20 of 1991

Employers in relation to the Management of Bank of Maharashtra.

AND

Their Workmen

APPEARANCES :

For the Employers.—1. Mr. R. M. Saoodra,
2. Mr. R. G. Londhe Representatives,

For the Workmen.—Mr. Vinayak Karmarkar, Representative.

Bombay, dated 10th February, 1995

AWARD

Shri S. A. Marathe is a member of the Bank of Maharashtra Karmachari Sangh, Pune. He was working at the Tilak road branch of the Bank of Maharashtra, at a relevant time. Mrs. Joshi who was a regular typist at that branch was on leave from 26-12-88 to 31-12-88. Mr. Marathe had a legitimate claim for that post but he was not allotted the post. Furthermore, he was deprived of the allowance of the post. There were three permanent posts of second cashier at Tilak Road branch. On 30-12-88 all these three posts fell vacant on temporary basis but only one post of second cashier was filled up and other posts were kept vacant. Those eligible employees were deprived from that allowance post and with its allowance. But after two months the said allowance were paid to the concerned employees without performance of the duties.

2. In the earlier occasions also in the Tilak Road Branch only the post were not filled up by the management in violation of the settlement of clause 7 of the Bipartite

Settlement dated 13-4-87. A demand was raised before the Assistant Labour Commissioner (Pune) with a request to intervene in the matter demanding the payment of the allowance. The management was called upon to give its say in the matter. But later on those concerned employees were paid the amount of allowance with retrospective effect.

3. The union submits that the action of the Bank in not altering the post and filling up the vacancy of temporary typist and depriving the eligible employees from the allowance is in utter violation of the settlement dated 13-4-87 and particularly clause 7 of the said settlement.

4. The management opposed the claim by their statement at exh. 3. It is contended that the reference made by the Central Government under section 10(1)(C) is not tenable. It is averred that the industrial dispute does not exist between the workman and the management as such the Tribunal had no jurisdiction to decide the same.

5. The management pleaded that the settlement dated 13-4-87 deals only with the procedure of allotment of allowance carrying the post. It is however, open to the management to take the decision as to whether the post has to be filled up or otherwise. It is contended that at that particular time, Marathe was not doing the typing work and from the point of view of consumer service it was thought proper to engage one clerk as a typist for the typing work and instead utilise his service as a clerk for customer service so that he could be useful for attending the customers. The management used its discretion that Marathe cannot claim the special allowance as he has claimed. It is averred that as claimed the concerned workman is not entitled to any reliefs as he has not performed any duties carrying special allowance.

6. The union by its rejoinder (exh. 5) pleaded that section 36 of the Industrial Disputes Act had not application in the present matter and the reference is rightly made by the Central Government. It is averred that there is no discretion with the management for allocation of the post even after looking to the wordings as it is in the settlement.

7. My Predecessor framed issues at exh. 4. The issues and my findings thereon are as follows :—

Issues	Findings
1. Whether the reference of the present nature made by the Central Govt. under sec. 10 of the I.D. Act is tenable in law ?	YES.
2. Whether no industrial dispute exists between the workman and the Bank management ?	The dispute
3. Whether this Tribunal has no jurisdiction to decide the reference of the present nature ?	It has jurisdiction.
4. Whether under the settlement dt. 13-4-1987 it is obligatory for the Bank to fill up the temporary vacancy even of short duration ?	YES.
5. Whether the Bank of Maharashtra Karmachari Sangh's interpretation that clause 7 of the Bipartite Settlement dated 13-4-87 implies that all the temporary vacancies has to be necessarily filled up by the management is correct ?	YES.
6. If so, what relief the concerned workmen are entitled to ?	As per order below.
7. What Award ?	As per order below.

REASONS

8. The parties have filed surmises that they do not want to lead any oral evidence in the matter (exh. 8).

9. The Government of India, Ministry of Labour had

made this reference under section 10 of the Industrial Disputes Act. The schedule of the reference is as follows :

SCHEDULE

"Whether the Bank of Maharashtra Karmachari Sangh's interpretation that Clause 7 of the Bipartite Settlement dated 13-4-87 implies that all the temporary vacancies has to be necessarily filled up by the management is correct ? If so, what relief the concerned workmen are entitled to ?"

10. On the basis of the words in this reference it is tried to argue on behalf of the management that the reference should have been under sec. 36A of the Industrial Disputes Act as a clarification is sought in respect of the clause 7 of the Bipartite Settlement.

11. The learned representative of the union argued that the section 36A of the Industrial Disputes Act clearly states that if in the opinion of the appropriate government any difficulty was about the interpretation of any provision the settlement it may refer the question to such a Labour Court/Tribunal. Here in this case the appropriate government namely the Central Government had no doubt in respect of any interpretation of clause of the settlement.

12. The reference is in respect of the improvement of settlement dated 13-4-87. It concerns with the forms and parties of service conditions. Those terms of the reference falls under items 1 & 2 & 6 of the second schedule and also being connected with the allowances under item 2 of the third schedule. The reference is under section 10(1)(D) of the Industrial Disputes Act, to the Tribunal for adjudication. Nothing is shown to me how under such circumstances it has no jurisdiction to decide the same.

13. Now it is necessary to reproduce the wordings of the clause 7 of the settlement dtd. 13-4-87. Clause no. 1 under sub-clause 9 under the head temporary vacancy reads as :—

"Temporary vacancy means a vacancy attracting Special/other allowances arising out of the sanctioned leave or absence of a permanent employee irrespective of the duration of such leave/absence and till the permanent arrangements are made. The vacancy arising out of suspension shall be treated as temporary vacancy."

In clause No. 7 subclause no. (ii) under the head "Allotment of Temporary Vacancy" "The temporary vacancies shall be filled up by allotting the posts to the senior most person in the cadre from the branch where such post is created, on temporary basis, till the permanent arrangements are made. The person holding such posts temporarily shall not have any permanent claim on the said post. In such cases, the senior most in the cadre in the branch as per the City Seniority shall be provisionally allotted the post."

14. It may be further seen that in the month of Feb. 1988 a settlement superseding the settlement dtd. 13-4-87 was signed between the parties which was circulated vide circular no. 22/3/88 (exh. 6/1). The relevant clause 7(3) reads as under :—

"If the temporary post is arising at the Extension Counter/Collection Centre and the parent branch cannot make immediate arrangements of allotting such post of his working at a place other than the place where the post is fallen vacant, such post, will be allotted to the senior most employee in the cadre at the Extension Counter/Collection Centres the case may be till the parent branch is in a position to make such arrangement provided however, that such arrangement should be made by the parent branch within 4 days."

7 (iii) was clarified vide item no. 1 under clarifications contained in the same circular dtd. 22-3-88. The said clarification runs as under :—

"In respect of clause 7 (iii) of the supplementary agreement it is clarified that if the leave is even for one day and is pre-sanctioned then the allowance carrying post should be allotted to the senior most person from the very first day. The period of 4 days has been provided only for those cases where the employees suddenly remains absent without intimation and immediate arrangement cannot be made".

15. It is not in dispute that on November 1988, the union made a demand in respect of the not allotting the temporary allowance carrying the post to eligible employees at the Tilak Road Branch of the Bank to the Assistant Labour Commissioner. It is not in dispute the management paid the allowance with retrospective effect to the concerned employees. It means the management is following the procedure laid down in the settlement dtd. 13-4-87.

16. It is tried to argue on behalf of the management that the procedure laid down in that settlement does not have any obligation on the part of the management to fill up the post. It depends upon the necessity. It is submitted that the whole interest of the society has to be taken into consideration when the work was not allotted to Marathe, it was in the interest of the public that he should work as a clerk and not as a typist. This submission by the management cannot be accepted in view of the clear terms of the settlement. The wordings are as used in clause 7. It means the management had to fill up the temporary vacancy. Furthermore, by the clarification dtd. 22-3-88 the position is made more clear by which if the opportunity for one day with the allowance carrying the post should be allotted with a view that the person should get the allowance. No discretion is left to the Bank for not allowing the post. The interpretation of the Sangh that all temporary vacancies should be filled up by the management as contemplated under the settlement dated 13-4-87 is correct and which is binding on the Bank to do so. In the result the decision taken by the management by not allowing the post to Marathe is incorrect. He is entitled for the benefits for that period. In the result, I record my findings on the points accordingly and pass the following order :—

ORDER

1. The Bank of Maharashtra Karmachari Sangh's interpretation that Clause 7 of the Bipartite Settlement of 13-4-87 implies that all temporary vacancies has to be necessarily filled up by the management is correct.
2. The management is directed to make the payment to Mr. Marathe who is entitled to the allowance for the post of Typist for the period 26-12-88 to 31-12-88.
3. No order as to costs.

10-2-95

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 मार्च 1995.

का.प्र. 952 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में श्रम न्यायालय, जोधपुर के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[संख्या एल-12012/445/91-आई आर(बी-2)]

बी.के. शर्मा, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court Jodhpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of UCO Bank and their workmen which was received by the Central Government on the 14-3-95

[No. I-12012/445/91 IR(B-II)]
V. K. SHARMA, Desk Officer

अनुबन्ध

श्रम न्यायालय, जोधपुर

पीठासीन अधिकारी :—श्री शंकरलाल जैन, आर०एच०जेडएस०
श्रम वाद (केन्द्रीय) सं० :—1/92

शिवराज जरिये महासचिव, राजस्थान बैंक एम्प्लोईज यूनियन
परवाना भवन माधो क्षेत्र, जोधपुर प्राथी

बनाम

डिवीजनल मैनेजर, यू०को० बैंक, कमर्शियल सेन्टर, खाईलेण्ड,
अजमेर (राज०) अप्राथी
उपस्थिति :—

- (1) प्राथी की ओर से विजय मेहता प्रतिनिधि
- (2) विपक्षी के विरुद्ध कार्यवाही इकतरफा।

अधिनिर्णय

दिनांक 15-2-1995

भारत सरकार के श्रम मंत्रालय, नई दिल्ली द्वारा निम्न
विवाद वास्ते अधिनिर्णय इस न्यायालय को प्रेषित किया
है :—

"Whether the action of the Divisional Manager, UCO Bank, Ajmer of terminating the services of Shri Shivraj, Taylor on 28-3-1991 is justified and legal? If not, to what relief is the workmen entitled?"

2. श्रमिक ने अपना मांग-पत्र प्रस्तुत कर यह अभिलेखित किया है कि उसे दिनांक 8-3-1985 को यू०को० बैंक बवाईचा जिला अजमेर में दैनिक वेतन पर नियुक्त किया गया था, प्राथी का कथन है कि उसने नियुक्ति तिथि से सेवा से पृथक्ता की तिथि 28-3-89 तक 522 दिन कार्य किया, उसने 12-10-86 से 12-10-89 की अवधि में 240 दिन तक कार्य किया इस प्रकार उसका कथन है कि उसने सेवापृथक्ता से पूर्व के एक वर्ष में 241 दिन कार्य कर लिया था, प्राथी का आगे कथन है कि इन 241 कार्य दिवस के अलावा वर्ष में 52 रविवार तथा 3 त्योहारों के अवकाश उक्त कार्य दिवसों में शामिल किये जायें तो प्राथी ने कुल 296 दिन सेवापृथक्ता से पूर्व एक वर्ष में कार्य कर लिया। मांग-पत्र में प्राथी ने आगे कहा है कि सेवापृथक्ता के पूर्व

प्राथी को न तो एक माह का नोटिस दिया गया और न ही उसके एवज में नोटिस वेतन दिया गया, छठनी तुलनावा भी नहीं दिया गया, छठनी की सूचना भी सक्षम सरकार को नहीं दी गई, बरिना सूचि नियमानुसार प्रकाशित नहीं की गई उसका कथन है कि उनकी सेवापृथक्ता धारा 25-एफ व 25-जी तथा नियम 77 के विरुद्ध होने से प्राथी सेवा की निरन्तरता में वेतन व भत्तों के साथ सेवा में पुनर्स्थापित होने का अधिकारी है।

3. प्राथी का यह भी कथन है कि विपक्षी बैंक नया यूनियन के 12-10-89 के समझौते के अनुसार प्राथी की सेवायें नियमित किये जाने योग्य थी, क्योंकि समझौते के अनुसार प्राथी ने उल्लेखित अवधि में 240 दिन कार्य कर लिया था, उसकी जम तिथि 7-7-68 है तथा 18 वर्ष की आयु होने के पश्चात् ही उसने तीन वर्षों में 240 दिन कार्य कर लिया था। अन्त में प्राथी की है कि सेवापृथक्ता के मौखिक आदेश को निरस्त किया जाये, उसे सेवा की निरन्तरता में नियमित सेवा व भत्तों सहित नियमित कर्मचारी की हैसियत से पुनर्स्थापित किया जाये।

4. विपक्षी बावजूद तामोल नोटिस उपस्थित नहीं हुआ जिसपर उसके विरुद्ध दिनांक 6-10-93 को एकत्रित कार्यवाही अमल में लाये जाने का आदेश दिया गया। विपक्षी की ओर से एकपक्षीय कार्यवाही अवास्त कराने के लिए कोई कार्यवाही अभी तक नहीं की गई है। विपक्षी की ओर से दिनांक 5-1-1994 को श्री वासुदेव व्यास तथा श्री जगदीश व्यास अधिवक्ता ने अपना बकालनामा पेश किया जिस पर प्राथी प्रतिनिधि ने धारा 36 आई०डो० एम्ड के तहत आपत्ति उठाई जिन पर उसी रोज बहुसंख्य सुनो जाकर यह आदेश दिया गया कि विपक्षी कानूनन अपना प्रतिनिधित्व अधिवक्तागण के माध्यम से कराने में सक्षम नहीं है।

5. प्राथी ने अपनी एकपक्षीय साक्ष्य में अपना मांग-पत्र प्रस्तुत किया व दस्तावेजों साक्ष्य में बैंक में किये गये कार्य की अवधि का विवरण, बैंक फार्म, औद्योगिक विवाद दिनांक 30-5-1991 जो एग्जिस्टेंट लेबर कमिशनर श्रम मंत्रालय के समक्ष पेश किया गया जिसका विपक्षी की ओर से जवाब दिनांक 17-10-91 पेश किया उसकी फोटो कॉपी पेश की गई है।

6. मैंने प्राथी के विद्वान प्रतिनिधि को सुना, पत्रावली पर उपलब्ध साक्ष्य एवं दस्तावेजात का अवलोकन किया। प्राथी के विद्वान प्रतिनिधि का तर्क है कि प्राथी को नियुक्ति दैनिक वेतन पर 8-3-1985 को हुई और उसने 28-3-89 तक 522 दिन कार्य किया, यह भी अपने तर्क में कहा है कि सेवापृथक्ता से पूर्व मिले एक वर्ष में अर्थात् 12-10-88 से 12-10-89 की अवधि में प्राथी ने लगातार 240 दिन कार्य किया लेकिन विपक्षी ने प्राथी को सेवापृथक्ता करार से पूर्व धारा 25-एफ व 25-जी तथा नियम 77 औद्योगिक विवाद अधिनियम के प्रावधानों की पालना नहीं की। प्राथी

को एक माह का नोटिस, नोटिस वेतन, छंटनी मुआवजा नहीं दिया गया। अतः प्रावधानों के विपरित की गई सेवा-मुक्ति अनुचित एवं अवैध घोषित की जावे तथा प्राथी का निरन्तर सेवा में मानते हुए समस्त देय लाभ दिलाये जावें।

7. प्राथी अपने एकपक्षीय शपथ-पत्र में कहता है कि उसकी नियुक्ति 8-3-85 को यू०को० बैंक बवाईवा जिला अजमेर में दैनिक वेतन पर हुई, वह स्पष्ट रूप से कहता है कि उसकी नियुक्ति तिथि से सेवा से पृथक्ता की तिथि 28-3-89 तक 522 दिन कार्य किया, उसने 12-10-88 से 12-10-89 की अवधि में 240 दिन तक कार्य किया तथा सेवा पृथक्ता की तिथि के पूर्व के एक वर्ष में उसने 241 दिन कार्य किया उसने शपथ-पत्र में कहा है कि उसके द्वारा किये गये प्रतिदिन के कार्यों का विवरण संलग्न परिशिष्ट में अंकित है वह यह भी कहता है कि एक वर्ष की अवधि में 52 रविवार तथा 3 त्योहारों के अवकाश उक्त कार्य दिवसों में शामिल करने पर उसकी कुल 296 दिन कार्य दिवस अवधि सेवापृथक्ता के पूर्व के एक वर्ष में बनती है। प्राथी स्पष्ट रूप से कहता है कि उसे सेवापृथक्ता से पूर्व न तो एक माह का नोटिस दिया गया, न ही उसकी एवज में नोटिस वेतन दिया गया, छंटनी मुआवजा भी नहीं दिया गया, विपक्षी बैंक तथा यूनियन के 12-10-89 के समझौते के अनुसार उसकी सेवार्थें नियमित किये जाने योग्य थी क्योंकि अपने समझौते में उल्लेखित अवधि में 240 दिनों तक कार्य किया।

8. उक्त शपथ-पत्र के खण्डन में विपक्षी ने कार्यवाही में भाग लेकर कोई शपथ-पत्र प्रस्तुत करने का प्रयास नहीं किया एवं न ही कोई उपस्थित ही हुआ। अतः प्राथी के एकपक्षीय अखण्डित शपथ-पत्र पर विश्वास करने का कोई औचित्य नजर नहीं आता। प्राथी ने जो कार्य की अवधि का विवरण 8-3-1985 से 27-3-1989 प्रस्तुत किया है उसके अवलोकन से भी प्राथी द्वारा अक्टूबर 1986 से अक्टूबर 1987 तक पिछले एक वर्ष में लगातार 240 कार्य दिवस तक कार्य करना प्रकट होता है।

9. प्राथी ने सेवापृथक्ता के पश्चात् अपना विवाद एग्जिस्टेंट सेक्टर कमीशनर श्रम मंत्रालय भारत सरकार के समक्ष दिनांक 30-5-1991 को प्रस्तुत किया जिसने फोटो प्रति भी पत्रावली पर उपलब्ध है। जिसके अवलोकन से भी यह प्रकट होता है कि प्राथी ने मार्च 1985 से 27-3-89 तक अप्राथी नियोजक के अधीन कार्य किया। विपक्षी नियोजक की ओर से उपस्थित होकर प्राथी के शपथ-पत्र व बरतन-वैजात का कोई खण्डन नहीं किया है अतः यह सिद्ध माना जाता है कि प्राथी ने सेवापृथक्ता से पूर्व पिछले एक वर्ष की अवधि में 240 दिन से अधिक कार्य कर लिया था। किसी श्रमिक द्वारा सेवापृथक्ता से पूर्व पिछले एक वर्ष में लगातार 240 कार्य दिवस पूर्ण कर किये जाने पर नियोजक का यह दायित्व बनता है कि वह उसे धारा 23-एफ, 25-जी की पालना में एक माह का नोटिस, नोटिस वेतन

व छंटनी मुआवजा अदा करे नियमानुसार वरियता सूची प्रकाशित करे। इन सब के अभाव में की गई सेवामुक्ति अनुचित एवं अवैध है।

10. हस्तगत सामने में प्राथी का स्पष्ट रूप से कथन है कि उसे एक माह का नोटिस दिया गया, नोटिस वेतन नहीं दिया, छंटनी मुआवजा भी नहीं दिया गया, वरियता सूची प्रकाशित नहीं की गई। इस प्रकार स्पष्ट है कि विपक्षी ने औद्योगिक विवाद अधिनियम के प्रावधानों का उल्लंघन करते हुए प्राथी को सेवा से पृथक् किया इसलिए ऐसी की गई सेवा मुक्ति अनुचित एवं अवैध घोषित किये जाने योग्य है। प्राथी पुनः सेवा में स्थापित किये जाने का अधिकारी है, उसकी सेवा निरन्तर मानी जावेगी तथा प्राथी सेवा-मुक्ति की तिथि से सेवा में पुनर्स्थापित किये जाने तक की पूर्ण पूर्व भूति (फुल बैक वेंजेज) भी प्राप्त करने का अधिकारी घोषित किये जाने योग्य है।

अधिनियम

11. अतः यह अधिनियमित किया जाता है कि विपक्षी नियोजक डिबीजनल मैनेजर, यू०को० बैंक, अजमेर द्वारा प्राथी शिवराज टेलर की सेवामुक्ति दिनांक 28-3-1991 से करना अनुचित एवं अवैध है। अतः आदेशित किया जाता है कि विपक्षी नियोजक प्राथी को तुरन्त सेवा में पुनर्स्थापित करे, उसकी सेवा निरन्तर मानी जावेगी, प्राथी सेवा-मुक्ति की तिथि से सेवा में पुनर्स्थापित किये जाने तक की पूर्ण पूर्व भूति (फुल बैक वेंजेज) भी प्राप्त करने का अधिकारी घोषित किया जाता है।

12. इस अधिनियम की प्रति वास्ते सूचना एवं प्रकाशगार्य भारत सरकार के श्रम मंत्रालय, नई दिल्ली को भेजी जावे।

13. यह अधिनियम आज दिनांक 15-2-1995 को खुले न्यायालय में हस्ताक्षर कर सुनाया गया।

शंकरलाल जैन, न्यायाधीश

नई दिल्ली, 15 मार्च, 1995

का०आ० 953.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 1, धनबाद के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[संख्या एल-12012/139/91-आइ०आर०जी-2]

बी०के० शर्मा, ईस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, 1, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on the 14-3-95.

[No. L-12012/139/91 IR(B-II)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 86 of 1991

Parties :

Employers in relation to the management of Central Bank of India,

AND
Their Workmen

Present :

Shri P. K. Sinha, Presiding Officer.

Appearances :

For the Employers : Sri Munir Ahmed Abbasi, Law Officer.

For the Workmen : Shri N. B. Srivastava, Asstt. General Secretary.

STATE : Bihar

INDUSTRY : Banking

Dated, the 6th March, 1995

AWARD

By Order No. L-12012/139/91-IR-B-II, dated 20-9-1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Central Bank of India in dismissing Shri Maheswar Prasad Singh is justified ? If not, to what relief is the workman concerned entitled ?"

2. Admittedly the concerned workman, Maheswar Prasad Singh, was a retired serviceman who subsequently was appointed in the service of the aforesaid Central Bank of India (hereinafter referred to as the Bank) as Armed Guard and was posted as such at Bhagwan Bazar, Chapra.

3. After the reference was received in this Tribunal both parties appeared and filed their respective written statements as well rejoinders. The case of the sponsoring Union in its written statement is that after his induction into service of the Bank he was performing his duty to the entire satisfaction of the authorities. It has been averred that the Bank in consultation with the recognised Union had formulated promotion policy for its workmen according to which a sub-staff (Class IV staff) was entitled to get straightway promotion in the clerical cadre and grade if he passed Madhyamic standard of examination from any recognised Board. About this promotion, the Bank in para 4 of its written statement has added that for such straightway promotion it was incumbent for the sub-staff to pass that examination in 1st Division. In course of proceeding, this condition for straightway promotion has been admitted by both the sides.

4. The sponsoring Union, in its written statement further has submitted that the concerned workman appeared in the Madhyamic examination of the year 1986 conducted by the Bihar Sanskrit Siksha Board, Patna as a private candidate through Shri Dhaneswar Singh Sanskrit High School, Samhota, Saran. The Board sent the result of the concerned school which informed the workman in writing, under signature of the Head Master, that he had

passed the examination in 1st Division and a certificate issued by the Board was sent to the workman. Furnishing a copy of that certificate the workman applied to the management for straightway promotion to the post of clerk. Instead of such promotion he received a memo dated 23-2-88 issued by the Regional Manager of the Bank, Siwan calling upon him to explain as to why disciplinary action should not be taken against him for making false declaration of passing the examination in 1st Division whereas he had passed the examination in 3rd Division.

5. Thereafter the workman immediately wrote a letter to the Head Master of the school, through registered post, asking him to clarify as to whether the certificate was genuine. The Head Master sent a registered letter ascertaining that the certificate was genuine. Accordingly, the workman replied to the management ascertaining that he had passed in 1st Division.

6. But the management issued chargesheet against him on the allegation of submitting false certificate for getting promotion and a departmental enquiry was held against him. His written statement has claimed that in the departmental enquiry the concerned workman was able to prove his innocence. It has been alleged that the Enquiry Officer failed to grasp the facts. A representative of the concerned school was also examined in favour of the concerned workman. It is alleged that even then the Enquiry Officer found him guilty of misconduct and he was punished with discharge from service. The Appellate Authority also agreed with the findings and the punishment.

7. On the aforesaid facts, a prayer has been made to render an award directing reinstatement of the workman in service with back wages and consequential benefits.

8. The Bank in its written statement denied the allegations. It has admitted that the concerned workman had applied for straightway promotion alongwith photo copies of the mark-sheet and the school leaving certificate, showing therein that he had passed the aforesaid examination in 1st Division. This representation was forwarded to the Regional office at Siwan which forwarded the same to the Zonal office at Patna. The Zonal office required the original mark-sheet which was supplied by the workman. That original mark-sheet was sent by the Zonal office to the Secretary of Bihar Sanskrit Shiksha Board to ascertain its genuineness, in response of which the Zonal office through its letter dated 8-1-88 requested the Secretary of the Board to intimate the actual marks obtained by the workman. The Secretary of the Board, through his letter dated 18-1-88 informed that the workman had passed the examination in 3rd Division having obtained a total of 330 marks. The Board also issued duplicate copy of his mark-sheet. It was after that that the workman was issued show cause notice and the management, not satisfied with the reply of the workman, instituted a domestic enquiry and the Enquiry Officer, on consideration of the materials on the record, came to the conclusion in his report that the charge was proved. Thereafter, on consideration of the materials, the Regional Manager, Siwan who was Disciplinary Authority in this case issued memo dated 11-12-89 proposing punishment and giving opportunity to the workman for a personal hearing. That hearing was held on 29-12-89 after which the Disciplinary Authority awarded punishment of discharge from the Bank's service to the workman as per provision of Clause 19.6 of the Bi-partite settlement. The workman preferred an appeal but the Appellate Authority confirmed the punishment. A prayer has been made to uphold the decision of the management.

9. As is clear from the written statement of the sponsoring Union that no specific allegations have been made against the fairness and propriety of the domestic enquiry. What has been alleged is that the Enquiry Officer reached at erroneous conclusion after considering the materials on the record. The point of erroneous conclusion can be raised at the final hearing on merit. Moreover, it will appear from order dated 27-7-94 of this Tribunal that the sponsoring Union had concealed the fairness and propriety of the domestic enquiry. In view of that the arguments of both parties on merit were heard for which Sri M. A. Abbasi learned officer appeared for the management and Sri N. B. Srivastava, Asstt. General Secretary, appeared for the sponsoring Union.

10. It appears that for sake of convenience some of documents have been marked exhibits in the Tribunal which are shown as Exts. M-1, M-2 and so on. It will also appear that in the domestic enquiry the documents submitted on behalf of the management were also marked as ME-1, ME-2 and so on and the documents submitted by the workman were marked as DE-1, DE-2 and so on. I shall be referring to all these documents by their exhibit numbers either marked in the Tribunal or by the Enquiry Officer, as the case may be.

11. First I will discuss the evidence adduced before the Enquiry Officer on relevant points. But before that it may be mentioned that Ext. M-1 (ME-2/A) is the charge-sheet dated 16-11-88 which runs as follows :

"A memo No. KO/PRS DAW/10/88/17 dated 23-2-88 was issued to Sri Maheshwar Prasad Singh Armed Guard, working at our Bhagwan Bazar branch (Chapra) for his acts of omission and commission. The explanation dated 25-3-88 submitted by Sri Singh to this memo has not been found satisfactory.

It has been, therefore, decided by the bank to hold a regular departmental enquiry against Sri Singh on the following charges :—

Sri M. P. Singh submitted an application to the Bank informing that he had passed the Madhama examination 1986 of the Bihar Sanskrit Siksha Board, Patna in the first Division, in support of which he submitted attested copies of the marks sheet, school leaving certificate and Admit Card of the said examination. He further requested the Bank in his application to accord him straightway promotion as Clerk in terms of Bank's policy. The mark sheet, etc. submitted by Sri Singh in support of his having passed the said examination in the first Division are bogus and that he has passed the examination in 3rd Division only.

Sri M. P. Singh thus cheated the Bank with clear mala-fide intention to secure straightway promotion from Subordinate cadre to clerical cadre, in terms of clause 9.2 of the Bank's promotion policy for award staff, by fraudulent means.

The above lapses of Sri Singh are prejudicial to the interest of the Bank and constitute gross misconduct on his part within 2th meaning of clause 19.5(i) of the Bipartite Settlement, 1966 which attract penalty as per clause 19.6 of the said settlement."

12. Ext. M-3 is the record of enquiry including the evidence of witnesses.

13. MW-1 on behalf of the management was Sri S. N. Singh, Branch Manager of the Bank at Sitamarhi Branch who was earlier posted as Branch Manager at Bhagwan Bazar branch, from April, 1983 to July, 1987. He identified the representation submitted by the concerned workman. This application is Ext. ME-3 from perusal of which it will appear that the concerned workman had filed an application stating therein that he had passed the aforesaid examination in the year 1986 with 1st Division hence was eligible for straightway promotion to the clerical cadre. He requested the management to promote him as such. The letter at ME-4 is the forwarding letter of the Branch Manager dated 8-6-87 to the Regional office at Siwan through which the application and the documents were forwarded. ME-5 is the photo copy of the mark-sheet allegedly issued by the Board in favour of Maheshwar Prasad Singh showing that he had secured a total of 360 marks, and had passed in 1st Division. This also contains the Stamped signature allegedly of the Secretary of the Board.

14. MW-1 has also clarified promotion policy of the Bank in reply to question No. 5 stating that for getting straightway promotion to the clerical grade a sub-staff was required to have passed Secondary School Examination or its equivalent examination in 1st Division. He has also testified about the documents in this regard filed by the management before the Enquiry Officer which also included the documents submitted by the concerned workman to the management with regard to his straightway promotion, and subsequent enquiry by the management. In its examination-in-chief this witness has

aid that the mark-sheet submitted by the concerned workman showed that he had received a total 360 marks and had secured 1st Division. He also has been cross examined on these documents. This witness has also said about Ext. ME-7 which is the photo copy of the Admit Card of the proceedee, duly verified by MW-1 after comparison from the original, as would appear from page 14 of the proceeding. The significance of this document I will discuss later. This witness was extensively cross-examined. But nothing has been pointed out in his evidence on behalf of the sponsoring Union which would support its case. During cross-examination this witness said that the photograph that was affixed on Ext. ME-7, the Admit Card, was that of the concerned workman (page 27). This witness has explained that on Ext. ME-7 Roll No. 20/143 was shown, out of which 20 denote of the Code and 143, the Roll No. of the candidate. This part of evidence is in relation to Roll No. shown in Ext. ME-5 which is photo copy of the mark-sheet submitted by the concerned workman in which Roll No. was shown just as 143. Ext. ME-6 is the original of the mark-sheet submitted by the workman which the workman had submitted later, when asked to do so by the Zonal Office. Elsewhere there is another photo copy of this original mark-sheet also marked as ME-6. However, it will appear from Ext. ME-20, which is the original mark-sheet obtained directly by the management from Bihar Sanskrit Siksha Board that the number of the concerned workman was 20/143. It is in this mark-sheet that the workman has been shown to have secured 330 marks and to have passed in 3rd Division. This is shown to be a duplicate copy, signed by the Administrative Officer of the Board.

12. Before further delving into the evidence it may be mentioned here that though the evidence of the witnesses may appear to be running into a number of type written pages, but actually those do not only contain the evidence of the witnesses, but the Enquiry Officer appears to have got noted everything that was being said by the management's representative, the workman or by the Enquiry Officer himself.

13. MW-2 is Sri D. P. Sinha, Faculty Member of the Bank's Z.S.T.C. at Patna who earlier was posted at Regional Office, Siwan as Dy. Chief Officer (Personnel) from 31-7-87 to 22-2-89. He has mainly spoken about various correspondences including those made in between Zonal Office at Patna and Regional Office at Siwan. Most of the cross-examination is technical by nature.

14. Sri B. Singh was MW 3 who was working in the office of the Secretary, Bihar Sanskrit Siksha Board at Patna. He was an Assistant and was also a Government employee. He had come to depute under order of the Office Incharge since the Secretary of the Board was out of Station. He has said about mark-sheet submitted by the concerned workman, by the Board to the management on its request as also correspondences between the two. This witness said that every original mark-sheet bears the facsimile of rubber stamp of Sri Yugal Kishor Narayan Pati Dubey, Secretary of the Board and is also initialed by the concerned Tabulator of respective Codes.

It has sufficiently come into evidence, as also supported by this witness in reply to Question No. 5, that the Code of the concerned workman was 20, hence the Tabulator for both the mark-sheets would be the same. But on Ex. ME-6 there appears an illegible signature of Tabulator whereas Ext. ME-20, the duplicate copy submitted by the Board to the management bears a fair signature of some D. K. Pannu. In both the mark-sheets the Centre of examination has been shown to be Zila School, Chapra. MW-3 has clearly stated that Sri Maheshwar Prasad Singh had appeared in 1986 Annual Examination of Madhama having secured 330 marks, passing in 3rd Division. Ext. ME-18 is a letter written by the Secretary of the Board dated 16-12-87 intimating to them that the marks shown to have been obtained by the proceedee (in Ext. ME-6) were wrong. This witness has testified that the letter was signed by the Secretary of the Board. Ext. M-19 which is also a letter dated 18-1-88 has been proved to have been signed by the Secretary Sri Dubey.

15. Sri Srivastava, appearing on behalf of the sponsoring Union, has drawn my attention towards cross-examination of this witness at page 53 where the witness was asked about the genuineness of the facsimile rubber signature of the Secretary of the Bihar Sanskrit Siksha Board on Ext. ME-6 to which the witness had replied that the same was genuine. He also admitted that this was the facsimile rubber stamp signature of the Secretary which was put on the original mark-sheet. But he could not say as to who had signed as Tabulator in Ext. ME-6.

16. What has to be kept in mind here is that the allegation of the management is that the concerned workman had managed to obtain a fake mark-sheet and had used the same for his direct promotion. Such fake mark-sheet rackets are not quite unknown. There is force in the argument of Sri Abbasi appearing for the management that printed mark-sheet appearing in similarity to the original can easily be obtained or manufactured by any unscrupulous person and a rubber stamp with similar facsimile signature can also be got prepared by persons involved into such rackets, whereas it would be a difficult proposition, if not impossible, to secure forged signature in pen and ink. He has submitted that this is why the signature in pen of the Tabulator in ME-6 is so illegible that on perusal of it no idea of the name can be had, whereas the signature of the Tabulator in the duplicate mark-sheet supplied by the Board in Ext. ME-20 is quite legible.

17. However, whether or not ME-6 was a forged document and whether or not the genuineness of the school which had sent the mark-sheet and school leaving certificate to the concerned workman can be doubted, has to be judged by not only the arguments showing implication, but also on other evidence available on the record. This witness has also said that Ext. ME-7 was genuine one.

18. As recorded in page 56 of the enquiry, this witness was asked by the management about sub-totalling of the marks of different papers, in a particular subject which was done in Ext. ME-20 but which was not done in Ext. ME-6. This witness said that subjectwise sub-totalling was done in the year 1986, and onwards.

19. Thereafter the defence adduced its evidence. Sri Pradeep Kumar Singh, Asstt. Teacher, Sri Dhaneshwar Singh Sanskrit Uchch Vidyalaya, Samhota, Saran was the first defence witness. It may be recalled that according to the claim of the proceegee he had appeared in the Madhvama Examination through this school and it was this school which had sent him his mark-sheet, school leaving certificate as well further correspondences relating to the genuineness of the aforesaid mark-sheet. This witness has said that he was Asstt. Teacher in Sri Dhaneshwar Singh Sanskrit Uchch Vidyalaya. This witness has proved the genuineness of the correspondences made in between the proceegee and the school. The documents proved by this witness have been marked in Ext. DE series. He has also testified about the genuineness of the rubber stamp used by the Head Master of the school which are on the letters proved by this witness. He also testified about the genuineness of Ext. MF-8 which was the school leaving certificate, which was also signed by Sri Sushil Kumar Singh Head Master of the school. He also has testified about the genuineness of Ext. ME-6.

20. But this witness appearing on the claim of his being the Asstt. Teacher in the concerned school does not inspire confidence on account of some of his answers. In answer to Question No. 4 in cross-examination he submitted that there was a Clerk in the school but he did not know his name. It is highly unlikely that a person working as Asstt. Teacher would not know the name of the only clerk of that Institution. When he was asked as to whether his school was approved by the Board, he said that his school was only proposed (for approval) but not approved by the Board. He said that the students from this school were appearing from some other approved school.

21. He also admitted that the original mark-sheets were sent by the Board to the school from where the student had appeared in the Madhvama examination as a private or regular candidate. But other documents and claims made by the school, as I will discuss later, would tend to show that this particular school had received the mark-sheet from the Board.

22. In reply to Question No. 14 this witness said that he had brought with him certain documents including photo copy of the mark-sheet of the proceegee. But earlier in reply to Question No. 11 he had submitted that the original mark-sheet was always delivered by the school to the candidate concerned after obtaining his signature.

23. It would appear highly irregular for any school to keep a photo copy of the mark-sheet of the candidates who have passed, even after delivering the original mark-sheet to them. It is generally the cross-list which is kept in the

school. It has nowhere come into evidence that the aforesaid school had any system of keeping photo copy of the mark-sheets of all the students.

24. DW-2 is one Sri Shyam Nath Sah, a Clerk at the Bank. He was examined to say that Ext. ME-6 was genuine one. He also testified that Ext. ME-7, photo copy of Admit Card, was submitted by the concerned workman while claiming straightway promotion. But in cross-examination he admitted that the reason of his belief that ME-6 was genuine was that it apparently appeared to be genuine.

25. DW-3 is Sri B. K. Singh who was earlier working as Currency Chest Officer at Bhagwan Bazar Branch. He also has said his opinion about different documents and his understanding of those. As a matter of fact neither side has dwelt at the evidence of these DW-2 and DW-3 while making their arguments.

26. There are number of grounds to believe that the mark-sheet in Ext. ME-6 was not a genuine one and that there was a lot to doubt about the genuineness of the school through which the proceegee claims to have appeared in the examination. In this regard I will discuss mainly those documents which have a bearing on this point because a lot of other documents have been filed, including different correspondences between Zonal Office of the Bank and the Regional Office and the concerned Branch as well between the management and the workman. From these documents it is clear that the concerned workman had applied for straight way promotion by enclosing copy of mark-sheet, Admit Card and School Leaving Certificate which were forwarded to the authorities by the concerned Branch. It also is proved through these documents that the Zonal Office had asked for original mark-sheet which was submitted by the concerned workman. It is also clear from these documents and the evidence on the record that the management thereafter obtained information about the point in issue from the Board concerned in which it was detected that the workman had passed in 3rd Division. The correspondences between the management and the concerned Board may be seen in Exts. ME-16, MF-17, MF-18 and ME-19. As already said Ext. ME-20 is the mark-sheet supplied by the Board to the management.

27. Ext. DE-2 is the letter sent by the concerned workman to the Head Master of Dhaneshwar Singh Sanskrit Uchch Vidyalaya on which the date given is 19-3-88. Through this letter the workman had intimated to the Head Master that the Bank had charged that the documents obtained from the Head Master about passing the examination in 1st Division were bogus as, according to the information of the Bank, he had passed in 3rd Division. He submitted that the Head Master should certify the documents given by him. It has been claimed that this letter was sent through registered post, which fact is also acknowledged in DE-3 which has been claimed to be the reply of the Head Master of the school to the concerned workman. But in Ext. DE-3 the date of the letter of the concerned workman has been shown to be 21-3-88, sent through registered post, whereas the date given in Ext. DE-3, the reply, is dated 22-3-88. It is really strange that though the concerned workman was working in the same Township in which this school was situated still he sent the letter through registered post. However through Ext. DE-3 the Head Master assured him that the documents were genuine, also intimating him that the school was also calling for clarification from the Board about which Sri Singh would be told after the reply was received. Ext. DE-4 is another letter from the aforesaid Head Master, to the Branch Manager of the Bank at Bhagwan Bazar Branch, dated 23-3-89 telling him that the mark-sheet as well the School Leaving Certificate were genuine. He also had attached photo copies of these documents.

28. On peculiar thing may be noticed in between Exts. DE-3 and DE-4, as aptly pointed out by Sri Abbasi while arguing the matter. He submitted that from the original of Exts. DE-3 and DE-4 (though their photo copies are also on the record) it will appear that in DE-3 the name of the school starts with "Shree" whereas in DE-4 it starts with "Dhaneshwar Singh....." but the stamp below signature of the Head Master in DE-4 shows that the name of the school was "Shree Dhaneshwar Singh Sanskrit Uchch Vidyalaya" whereas the stamp below signature of the Head Master in DE-3 shows that the name of the school was "Dhaneshwar Singh Sanskrit Pra-Sahil Uchch Vidyalaya".

Therefore there clearly is difference in the names of the School. In both the Letter Pad the printed name of the school is shown to be "Dhaneshwar Singh Sanskrit Pra-Sah-Uchch Vidyalaya" (with pre-fixing of "Shree" in DE-3). There could not be such difference in the name of the school. Though Question No. 16 of DW-1 has tried to explain this, but from a perusal of this question it would be clear that the word "Shree" was definitely affixed before "Dhaneshwar". But in these two documents there is difference about that also. That is hardly possible in case of a genuine school.

29. Now coming to ME-7, the Admit Card of the concerned workman, in Column No. 6 the name of a school has been mentioned which is "Gurukul Sanskrit Uchch Vidyalaya, Mahiyan, Chapra". This is neither the name of the school which gave the procee-dee his mark-sheet, nor the name of the school from which he had appeared, but it has not specifically been explained anywhere as to how this third name of the school has cropped up in the Admit Card which admittedly was issued for allowing the candidate to appear in the Madhyama Examination. The name of the Centre has been given which is Zila School.

30. These evidence, particularly the evidence of MW-3 an employee of Bihar Sanskrit Shiksha Board at Patna tend to prove that the mark-sheet relied upon by the concerned workman was not a genuine one.

31. An attempt has been made to show that the concerned workman might have been an innocent victim and had applied for promotion, genuinely believing that the mark-sheet supplied by the school was correct. I cannot endorse this line of argument because there is no reason why someone would take the trouble of manufacturing a mark-sheet for a particular person on his own if such a thing has been done it must have been done with the connivance of the two.

32. Therefore, I agree with the findings of the Enquiry Officer that the charge levelled against the workman was proved.

33. Next question would be as to whether the punishment imposed for the misconduct proved was justified or not.

34. The charge-sheet refers the aforesaid action of the concerned workman to be constituting gross misconduct within the meaning of Clause 19.5(j) of the Bi-partite Settlement 1966 which attracts penalty as per Clause 19.6 of that settlement. Under Clause 19.5(i), doing any act prejudicial to the interest of the Bank constitutes an act of gross misconduct. Under Clause 19.6 of the same settlement, for a gross-misconduct a workman can be awarded any of the five punishments mentioned therein, including dismissal without notice.

35. When it has been proved that the concerned workman wanted to become a Clerk in the Bank by using mark-sheet which has been proved to be not genuine, that must be deemed to be an act prejudicial to the interest of the Bank. The workman has been shown to have used a false document for securing a more responsible position in the Bank Therefore, the workman must be held to have indulged into an act which could be defined as gross misconduct.

36. Shri Abbasi in course of his argument justifying the punishment has submitted that the entire Institution of banking depends upon the confidence of its constituents and upon integrity of its employees because even an Assistant in the Bank has to deal with huge amount of money which the Bank holds in trust. I find his argument convincing. If a workman shows by his action that he is not worthy of confidence or whose integrity in any manner is doubtful then as Institution like Bank must do without such an employee.

37. Therefore, I find nothing wrong with the punishment imposed upon the workman.

38. The award, herefore, is as follows :

The action of the management of Central Bank of India in dismissing Maheshwar Prasad Singh was justified. The workman is not entitled to any relief.

Under the circumstances of the case parties shall bear their own cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 15 मार्च, 1995

का०प्रा० 954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, मी० ईस्टन कोलफील्ड्स लिटि० की सैन्डल पूल, लखीमाता कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं० 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या—एल-20012/98/89—आई०प्रा० (कोल-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th March, 1995

S.O. 954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Pool of Lakhimata Colliery of Ms. E.C.L. and their workmen, which was received by the Central Government on the 15-3-95.

[No. L-20012/98/89-IR(Coal-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under sec. 10(1)(d)(2A) of

I. D. Act.
Referece No. 129 of 1990

PARTIES :

Employers in relation to the management of Central Pool of Lakhimata Colliery of M/s. E.C Ltd

AND

Their Workmen.

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers : Shri R. S. Murthy, Advocate.
For the workmen : None.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 28th February, 1995

AWARD

By Order No. L-20012(98)/89-I.R. (Coal-I) dated 4-6-1990 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-sec. (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the age of Punniya Sahu, Wagon Loader, Central Pool of Lakhimata Colliery was 45 years on 14-7-1982 or 53 years? If 45 years, what relief the concerned workman is entitled to?"

2. By Order of this Tribunal dated 6-4-1994 the reference was placed for hearing on merit and the sponsoring Union was directed to adduce evidence on 6-7-1994. On 6-7-1994 Sri D. Mukherjee, Secretary of the sponsoring Union had submitted that neither the file was with him nor the concerned workman was coming to him, hence if the Union failed to adduce evidence on the next date, the Tribunal

might under a 'no dispute' award. On the next date also Sri Mukherjee sought one more adjournment which was given as last one. On 21-2-95 none appeared for the workman though Sri R. S. Murthy, Advocate was present on behalf of the management. Then the case was adjourned to 23-2-95 and on that date also none was present on behalf of the sponsoring Union.

3. It is manifest that the sponsoring Union does not want to proceed with the case because it has failed to adduce evidence on different dates and particularly in view of the submission of Sri D. Mukherjee recorded in the order dated 6-7-1994.

3. I, therefore, appears that the sponsoring Union now has no dispute with the management.

4. Therefore, I render a 'no dispute' award in the present industrial dispute.

P. K. SINHA, Presiding Officer

नई दिल्ली, 16 मार्च, 1995

कां० 955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[सं० एल-22012/58/91-आई०आर० (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S. C. C. Ltd. and their workmen, which was received by the Central Government on the 14-3-1995.

[No. L-22012/58/91-IR CII]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT

HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated : 16th day of January, 1995

INDUSTRIAL DISPUTE NO. 13 OF 1991

BETWEEN

The General Secretary,

Singareni Collieries Workers Union,

(AITUC), Kothagudem, Khammam Dist.

... PETITIONER

AND

The Chief Personnel Manager,

M/s. Singareni Collieries Company

Limited, Kothagudem, Khammam

Dist. 507101

.. RESPONDENT.

APPEARANCES :

M/s. K. Srinivasa Murthy & Miss G. Sudha, Advocates
for the Respondent.

Petitioner set exparte.

AWARD

This is a reference made by Government of India, Ministry of Labour by its Order No. L-22012(58)/91-R(C.II), dt. 25-4-1991 for adjudication of the dispute between the management of Singareni Collieries Company Limited, Kothagudem and their Workmen under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 which is specified in the Schedule as follows :—

"Whether the demand of the Singareni Collieries Workers Union (AITUC), Kothagudem, for promotion of Sri Anwar Machineman, Singareni Press to Grade 'D' with retrospective effect is justified? If not, to what relief the workman entitled?"

The said reference has been registered as Industrial Dispute No. 13 of 1991 on the file of this Tribunal. Notices were served on both the parties.

2. The petitioner called absent from 27-5-1991 till 29-6-1991. On 29-6-1991 the Petitioner was called absent and set exparte. For counter of the Respondent, adjournments were given from time to time till 5-10-1991. On 5-10-1991 the Respondent filed its counter and for enquiry again adjournments were given from time to time till 30-9-94. On 30-9-1994 the Respondent stated that nil award may be passed and memo filed to that effect. The Respondent reported no evidence, and the matter was posted to 25-10-1994. On 22-10-1994 suo moto advanced to this day and reopened the matter. For the evidence of the Petitioner it was posted to 28-11-1994, 28-12-1994. Finally on 16-1-1995 the Petitioner was called absent. As claim statement also has not been filed on behalf of the petitioner and he remained exparte on 29-6-1991 and another opportunity was given to him to adduce evidence on his behalf but he did not choose to adduce any evidence. The counsel for Respondent submitted that the Respondent has no evidence as the petitioner failed to adduce any evidence.

3. In view of the above said circumstances, there is no need to adjudicate upon any further by this Tribunal as the petitioner did not file his claim statement and also did not choose to adduce any evidence. Therefore the reference is closed.

4. In the result, an Award is passed closing the reference. Typed to my dictation, given under my hand and the seal of this Tribunal, this the 16th day of January, 1995.

A. HANUMANTHU, Industrial Tribunal-I.

APPENDIX OF EVIDENCE.

NIL

नई दिल्ली, 16 मार्च, 1995

कां० 956.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[सं० एल-22012/348/91आई०आर० (सी-II)]

राजा लाल डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 14-3-1995.

[No. L-22012/348/91-IR CII]
RAJA LAL, Desk Officer

ANNEXURE
BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT:

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated : 28th day of January, 1995

INDUSTRIAL DISPUTE NO. 36 OF 1992

BETWEEN

The Secretray,
S.C.M.K. Sangh (BMS)
P.O. Godavarikhani,
Dist. Karimnagar-505001. . . Petitioner

AND

The General Manager,
RG. I, M/s. Singareni Collieries
Company Limited,
P.O. Godavarikhani,
Dist. Karimnagar-505001. . . Respondent.

APPEARANCES:

M/s. K. Srinivasa Murthy, Miss. G. Sudha and P.V.
Kishore Babu, Advocates for the Respondent.

Petitioner set ex-parte on 12-1-1995.

AWARD

This is a reference made by Government of India, Ministry of Labour, by its Order No. L-22012/348/91-IR(C.II), dt. 16/22-6-92 for adjudication of the dispute between the Management of Singareni Collieries Company Limited, RG (P) Godavarikhani and their Workmen under Section 10(1) (d)(2A) of the Industrial Disputes Act, 1947 which is specified in the schedule as follows:

"Whether the action of the management of S.C.C. Ltd., RG-I, Godavarikhani, in denying to promote Sri D. Janardhan, General Mazdoor from Cat. I to Cat. II as he has not completed three years of service in operation side on M.E.M.M. Equipment though he has transferred by the management just 4 months before completion of 3 years, is legal and justified? If not, to what relief the workmen is entitled to?"

The said reference has been registered as Industrial Dispute No. 36 of 1992 on the file of this Tribunal. Notices were served on both the parties.

2. The Petitioner was called absent in spite of notes on 7-10-1992, 27-3-1993, 26-6-1993, 6-8-1994, 9-12-1994 and on 12-1-1995 the Petitioner was called absent and set ex-parte. For counter of the Respondent it was posted to 28-1-1995. On 28-1-1995 the Advocate for the Respondent submitted that the Respondent has no counter as the Petitioner-workman has not filed any claim statement. As the Petitioner and Respondent have not submitted their case, there is no question to be considered and adjudicated upon by this Tribunal. Hence the reference is closed.

3. In the result, an Award is passed closing the reference.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 28th day of January, 1995.

A. HANUMANTHU, Industrial Tribunal-I
Appendix of Evidence.
NIL

नई दिल्ली, 16 मार्च, 1995

का. आ. 957.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[सं. एल-22012/513/91-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 957.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of S. C. C. Ltd. and their workmen, which was received by the Central Government on the 14/3/95.

[No. L-22012/513/91-IR-CII]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT:—Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated : 30th day of January, 1995

INDUSTRIAL DISPUTE NO. 57 OF 1992

BETWEEN:

The General Secretary,
Sigareni Collieries Workers Union,
(AITUC) Kothagudem, P.O. Khammam Dist.
A.P. 507 101. . . PETITIONER

AND

The General Manager (Personnel),
M/s. Singareni Collieries Company
Limited, Kothagudem,
P.O. Khammam District. . . RESPONDENT.

APPEARANCES:

Sri G. Bikshapathi & Others, Advocates for Petitioner,
M/s. K. Srinivasa Murthy & others, Advocates for
Respondent.

AWARD

This is a reference made by the Government of India, Ministry of Labour, by its Order No. L-22012/513/91-IR (C.II), dt. 11-8-1992 for adjudication of the dispute between the Management of Singareni Collieries Company Limited, Kothagudem and their workmen under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 which is specified in the schedule as follows:

"Whether the action of the management of M/s. S.C.C. Ltd., Kothagudem, in not allowing 'C' Grade Workmen promoted under service linked upgradation to sign the Attendance Register on par with other 'C' Grade workmen of the Company is legal and justified? If not, to what relief the concerned workmen are entitled to?"

The said reference was registered as Industrial Dispute No. 57 of 1992 on the file of this Tribunal. Notices were served on both the parties.

2. The Petitioner-Union filed claim statement on 22-3-1993 and the Respondent-Management filed counter on 4-6-1993. Since 4-6-1993 the matter was posted for enquiry. Both the parties sought adjournments from time to time till last chance was given on 24-1-1995. On 24-1-1995 the Advocate for Petitioner reported no instructions for the petitioner. The petitioner was called absent. No representation for the Petitioner and he was set ex parte. Advocate for Respondent submitted that as the petitioner failed to adduce any evidence on his behalf, the Respondent is not adducing any evidence. So the matter was called on 30-1-1995. On 30-1-1995 as there is no evidence on either side the reference was closed.

3. In view of the above said circumstances, there is no need to adjudicate upon any further by this Tribunal as the Petitioner did not adduce any evidence and the Respondent also has not adduced any evidence. Therefore the reference is closed.

4. In the result, an Award is passed closing the reference.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of January, 1995.

A. HANUMANTHU, INDUSTRIAL TRIBUNAL-I.

Appendix of Evidence :
NIL

नई दिल्ली, 16 मार्च, 1995

का. आ. 958.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, एस सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/3/95 को प्राप्त हुआ था।

[सं. एल—22012/247/94—आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workmen, which was received by the Central Government on the 14-3-95.

[No. L-22012/247/94-IR C.II]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

Dated, 31st day of January, 1995
Industrial Dispute No. 73 of 1994

PRESENT:

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

BETWEEN

Vice President, S.C. Collieries,
Machines Operators and Mine Workers
Association, Godavarikhani (PO),
Karimnagar (Distt.).

.. Petitioner

AND

General Manager,
Singareni Collieries Company Limited,
R.G.-I. Godavarikhani,
Karimnagar District.

.. Respondent

APPEARANCES:

None present for both the parties.

AWARD

This is a reference made by Government of India, Ministry of Labour, by its Order No. L-22012/247/94-R.C.II, dated 21-9-1994 for adjudication of the dispute between the Management of Singareni Collieries Company Limited, R.G.I and their workmen under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 which is specified in the Schedule as follows:

"Whether the action of the management of S.C.C.I., R.G.-I, Godavarikhani in not promoting Shri T. Durgaiiah, General Mazdoor, 18 M.W. Power House, R.G.-I, Godavarikhani to the post of Auxiliary Turbine Attendant Category IV for want of vacancy though his junior has been promoted is legal and justified? If not, to what relief the workman is entitled to?"

The said reference has been registered as Industrial Dispute No. 73 of 1994 on the file of this Tribunal. Notices were served on both the parties.

2. The petitioner was absent on 31-1-1995 though notice was served and he was set ex parte. Both parties failed to appear in pursuance of the notices issued to them.

3. In view of the above said circumstances, there is no need to adjudicate upon any further by this Tribunal as both parties failed to appear in pursuance of the notices issued. Therefore the reference is closed.

4. In the result, an Award is passed closing the reference.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 31st day of January, 1995.

A. HANUMANTHU, Industrial Tribunal-I
Appendix of Evidence

(NIL)

नई दिल्ली, 16 मार्च, 1995

का. आ. 959.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/3/95 को प्राप्त हुआ था।

[सं. एल—22012/52/94—आईआर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 959.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of S.C.C. Ltd., and their workmen, which was received by the Central Government on the 14-3-1995.

[No. L-22012/52/94-IR-C.II]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT:

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.

Dated, 30th day of January, 1995

Industrial Dispute No. 37 of 1994

BETWEEN

The General Secretary,
Singareni Collieries Labour
Union (INTUC), H.O. Bellampalli-
504251, Adilabad District. ..Petitioner.

AND

The General Manager,
Singareni Collieries Company Limited,
RG-II, Godavarikhani,
Karimnagar District. ..Respondent.

APPEARANCES :

M/s. K. Srinivasa Murthy, G. Sudha, J. Shyamala, K.
Bharati, Y. S. Chakravarthi, Advocates for the
Respondent.
None present for Petitioner.

AWARD

This is a reference made by Government of India, Ministry of Labour, by its Order No. L-22012(52)/94-IR(C.II), dated 24-5-1994 for adjudication of the dispute between the Management of Singareni Collieries Company Limited and their workmen under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 which is specified in the schedule as follows :

"Whether the action of the Management in not promoting S/Shri M. Laxmaiah, N. Anjaneyulu and N. Bhuthalah, RH Operators; Ex-Grade C GDX 10A incline on par with Shri G. Rajesham, Sri K. K. Badra and other RH Operators GDK 11A incline and others is legal and justified? If not, to what relief the workmen are entitled?"

The said reference has been registered as Industrial Dispute No. 37 of 1994 on the file of this Tribunal. Notices were served on both the parties. The petitioner Union was absent right from 1-8-1994 posted for appearances and for filing their claim statement, till this day i.e., 30-1-1995. On 30-1-1995 the counsel for the Respondent submitted that the Respondent is not intending to file counter as no claim statement has been filed on behalf of the claimant. This Tribunal finds that there are no triable issues, the reference be closed.

2. In view of the above circumstances, there is no need to adjudicate upon any further by this Tribunal as the Petitioner Union did not file its claim statement and also did not adduce any evidence. Therefore reference is closed.

3. In the result, an Award is passed closing the reference.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of January, 1995.

A. HANUMANTHU, Industrial Tribunal-I

Appendix of Evidence

NIL

नई दिल्ली, 16 मार्च, 1995

का. आ. 960.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस सी सी एल. के प्रबन्धसूत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[मं. एल-22012/72/89-आईआर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 960.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of SCC Ltd. and their workmen which was received by the Central Government on the 14-3-1995.

[No. L-22012/72/89-IR C-II]
RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

PRESENT :

Sri A. Hanumanthu, M.A., LL.B., Industrial Tribunal-I.
Dated : 9th day of February, 1995

Industrial Tribunal Dispute No. 64 of 1990

BETWEEN

The Work of Singareni Collieries
Company Limited, Kothagudem,
Khammam District (A.P.) ..PETITIONER

AND

The Management of Singareni Collieries
Company Limited, Kothagudem,
Khammam District. (A.P.) ..RESPONDENT.

APPEARANCES :

M/s. K. Srinivasa Murthy, Miss G. Sudha, M. Anantha-
sen Rao, Advocate—for the Respondent.
Petitioner set ex parte.

AWARD

This is a reference made by Government of India, Ministry of Labour, by its Order No. L-22012(72)/89-IR(C.II) dt. 17-10-1989 for adjudication of the dispute between the Management of Singareni Collieries Company Limited, Kothagudem and their workmen under Section 10(1)(d) & (2-A) of the Industrial Disputes Act, 1947 which is specified in the Schedule as follows :

"Whether the demand of Singareni Collieries Workers Union (AITUC) Kothagudem for placement of the Sri Ch. Kutumba Rao, Mason Cat. V, Power House in Cat. VI is justified? If so, to what relief Sri Ch. Kutumba Rao is entitled?"

The said reference has been registered as Industrial Dispute No. 64 of 1990 on the file of this Tribunal. Notice were served on both the parties.

2. The Petitioner-Workman filed its claim statement on 21-1-1990 and the Respondent-Management filed its counter on 6-7-1991. The enquiry was posted to 6-9-1991. From 6-9-1991 the matter was adjourned from time to time. On 8-8-1994 the Petitioner was set ex parte as he did not present himself before this Tribunal. On 21-9-1994 the Respondent reported no evidence and heard the Advocates for the Respondent and reserved for Award to 17-10-1994. In the meanwhile suo moto reopened on 17-10-1994 and posted for further hearing to 28-11-1994. Again adjournments were given from time to time and finally on 9-2-1995 no evidence has been let in on either side and there are no point for determination by this Tribunal.

3. In view of the above said circumstances, there is no need to adjudicate upon any further by this Tribunal as both parties failed to appear and prosecute the case. Therefore the reference is closed.

4. In the result, an Award is passed closing the reference.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 9th day of February, 1995.

A. HANUMANTHU, Industrial Tribunal-I.
Appendix of Evidence

NIL

नई दिल्ली, 16 मार्च, 1995

V/S.

Management of Food Corporation of India

In the matter of Joint application on behalf of workman and the Management.

1. That the Central Govt. has made a reference under section 10 of the Industrial Dispute Act, 1947 in the above titled case which reads as under :—

"Whether the action of the Zonal Manager (North) FCI, New Delhi is not considering the case of seniority list from the date of interview i.e. 22-9-1971 in respect of Shri Jai Narain, presently working at Food Storage Depot, Naraina, New Delhi is legal and justified? If not, to what relief the workman is entitled to"

2. That the matter was discussed with Shri Vinod Kumar, General Secretary, FCI Executive Employees Union, authorised representative of the workman is take up the matter with the Presiding Officer, CGIT to obtain consent award in the instant case. It was decided that the case will be settled amicably on the terms specified below :

(a) That the seniority list of the workman (Jai Narain) will be recast as AC.III(D) in accordance to the judgement of High Court of Delhi in C.M. No. 4681/93 (B.D. Sehrawat and others) annexed as Annexure I. The seniority of the workman in the higher cadre will be revised notionally on the basis of the seniority to be assigned to him in accordance with the judgement of the High Court.

(b) The Hon'ble Tribunal may be pleased to decide the reference in the form of content award.

WORKMAN

1. Vinod Kumar,
Authorised Representative
2. Jai Narain
workman.

MANAGEMENT FCI

A. K. RAINA
Advocate
Anil Kapoor
Deputy Manager (IR)/I/C

Copy of Order
Final Draft
Stay/Stay in Continuation
Rejection
From

Case Fixed for:_____

No. _____

Dt. _____

The Registrar
High Court of Delhi
New Delhi.

To

1. Food Corporation of India, through Managing Director Headquarters, Barakhamba Lane, New Delhi.
2. Food Corporation of India
through Zonal Manager (North)
Ansal Bhawan, K.G. Marg, New Delhi

C.M.P.nd-----
in/&

CIVIL WRIT PETITION NO. 3599/93 & CM 4681/93
Harish Chander & Others .. PETITIONER

का. आ. 961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ सी आई के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-3-95 को प्राप्त हुआ था।

[सं. एल.—42012/59/88-डी-II(बी) डी IV(बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 961.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 14-3-1995.

[No. L-42012/59/88 DH(B) DIV(B)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL,
NEW DELHI

I.D. No. 9/89

In the matter of dispute between :

Maha Sachiv,
Food Corporation of India,
Executive Employees Union, (North Zone)
2-337, Dharampura in front of Chappiwara Bazar,
New Delhi-11006.

Versus

Zonal Manager (North),
Bhartya Khadya Nigam,
Fourth Floor, Ansal Bhawan,
Kasturba Gandhi Marg,
New Delhi-110021.

APPEARANCES :

Shri Vinod Kumar—for the workman.
Shri A K. Raina—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/59/88-D.II.B D-4(B) dated 12/88 has referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the Zonal Manager (Northern Zone), Food Corporation of India, New Delhi is not considering the base of seniority list from the date of interview i.e 22-9-71 in respect of Sri Jai Narain present working at Food Storage Depot, Naraina, New Delhi, is legal and justified? If not, to what relief the workman concerned is entitled?"

2. After the conclusion of the evidence of the parties case was fixed for arguments when the parties settled the dispute and filed a settlement Ex. M-1. Statement of the parties was recorded and they stated that settlement Ex. M1 was acceptable to both of them and the terms contained therein shall form part of the settlement. In view of the settlement Ex. M1 the matter stands settled. Party shall remain bound by the terms of document Ex. M1 and shall bear their own costs. February, 14, 1995.

GANPATI SHARMA, Presiding Officer

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL AND COURT, NEW DELHI

ID Case No. 9/89

Shri Jai Narain

.. Workman

VERSUS

ANNEXURE

Food Corporation of India & Others . . .RESPONDENTS
Sir,

In Continuation of this Court's letter no. _____ dt. _____
I am directed to forward for information and immediate
compliance/necessary action, a copy of order dt. 11-1-94
passed by a Division Bench/Hon'ble Mr. Justice _____

_____ of this Court in the above noted.

Please acknowledge receipt.

Yours faithfully
Deputy Registrar (WRIT)
For Registrar
Orders

Date

1-1-94

PRESENT :

Mr. Mukul Rohtagi, Sr. Advocate with
Mr. Vipin Sanghi for the petitioner
Mr. Naveen Kumar—for Mr. Vinod Kumar
Counsel for respondent.

C.W. 3599/93 & C.W. 4681/93

Rule DB.

The cases are in all four covered by the decision of this
court in C.W. 1319/91, Singh Ram Vs. Food Corporation
of India and the matter decided on 14th January,
1992 against which SLP (C) Nos. 6681/92 & 6890/92 were
dismissed by the Supreme Court on 7th August, 1992.

Since it is a covered matter, we allow the writ petition in
terms of the earlier decision referred to above and direct
the respondent corporation to fix petitioner's seniority on the
basis of the date of selection in terms of Regulation 16(1) of
the Food Corporation of India (Staff) Regulations, 1971.

Sd/- G. C. Mittal,
Sd/- Arun Kumar-J

January 11, 1994

नई दिल्ली, 16 मार्च, 1995

का. आ. 962.—औद्योगिक विवाद अधिनियम,
1947 (1947 का 14) की धारा 17 के अनुसर्ग में,
केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दौर के प्रबन्धतंत्र के संबंध
नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट
औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,
जबलपुर के पंचपद को प्रकाशित करती है, जो केन्द्रीय सरकार
को 15/3/95 को प्राप्त हुआ था।

[संख्या एल—12012/230/89—आई आर बी-III]

पी. जे. माईकल, डैस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 962.—In pursuance of Section 17 of the In-
dustrial Disputes Act, 1947 (14 of 1947), the Central
Government hereby publishes the Award of the
Central Government Industrial Tribunal, Jabalpur as
shown in the Annexure, in the industrial dispute bet-
ween the employers in relation to the management of
State Bank of Indore and their workmen, which was
received by the Central Government on the 15-3-95.

[No. L-12012/230/89-(IRB-III)]

T. J. MICHAEL, Desk Officer

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
JABALPUR (MP).

Case Ref. No. CGIT/LC(R) (260)/1989

BETWEEN

Shri Kedar Nath Gupta, Ex-Peon C/o. Bank Asthai
Karamchari Sangh, Menu Pandey Ki Building, Court
Road, Shivpuri (MP)-473 551.

AND

The Regional Manager, State Bank of Indore,
Bhopal Zonal Office, Rud house, 4 Maharana Pratap
Nagar, II, Bhopal (MP)-462006.

Presided in : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : None.

For Management : Shri S. K. Rao, Advocate.

INDUSTRY : Banking DISTRICT : Bhopal (MP).

AWARD

Dated; February 28, 1995

This is a reference made by the Central Govern-
ment, Ministry of Labour, vide its Notification No.
L-12012/230/89-IR(B-3) dated 13-12-1989, for ad-
judication of the following industrial dispute :—

SCHEDULE

“Whether the action of the management of the
Regional Manager, State Bank of Indore,
Bhopal, in not providing employment to
Shri Kedar Nath Gupta, Ex-Peon, after the
14-8-84, and whether his termination, is
justified? If not, to what relief the wokman
is entitled to?”

2. Admitted facts of the case are that the workman
joined the service of the State Bank of Indore as a
Peon on 1-6-64 at its Shivpuri Branch.

3. The case of the workman is that he was appoint-
ed as a Peon as a probationer he has worked for
more than 240 days from 1-6-64 and his services were
continued; the services of the workman were unauthor-
isedly terminated. The workman has prayed for regu-
lar appointment with effect from 14-8-84 with full
back wages and consequential benefits.

4. The case of the management is that the work-
man was appointed as a temporary peon against the
temporary absence of a permanent workman. Manage-
ment has denied that the workman was appointed as
a probationer. It is alleged that the services of the
workman were terminated without notice because his
appointment was temporary. It is further submitted
by the management that the claim of the workman
is ighly belated and stale and in the aforesaid cir-
cumstances, it is liable to be rejected.

5. After filing of the statement of claim on 5-1-90 the workman has never appeared in last five years nor he has adduced any oral or documentary evidence in last five years and although enumerable dates were given to that effect. There is no proof that the workman has continuously worked for 240 days in a calendar year. Consequently, it cannot be said that the action of the management in terminating the services of Shri Kedar Nath Gupta and not providing him employment was unjustified. The workman is not entitled for any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 16 मार्च, 1995

का. आ. 963.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दौर के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/3/95 को प्राप्त हुआ था।

[संख्या एल—12012/145/90—आर आर बी-III]

टी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 963.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 15-3-95.

[No. L-12012/145/90-IR(BIII)]

T. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
JABALPUR (MP).

Case Ref. No. CGIT/LC(R) (211)/1990

BETWEEN

Shri Hiralal S/o. Laxminarayan, represented through the Regional Secretary, State Bank Indore Employees Union (MP), City Post Office Building, Prince Yashwant Road, Indore (MP)-452004.

AND

The Regional Manager (II), State Bank of Indore, 163, Kanchan Bag, Indore (MP)-452001.

Presided in : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : Shri P. N. Sharma.

For Management : Shri G. C. Bhatia.

INDUSTRY : Banking DISTRICT : Indore M.P.)

AWARD

Dated, February 28, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/145/90-IR(B-3) Dated 24-10-1990, for adjudication of the following industrial dispute :—

SCHEDULE

“Whether the action of the management of Regional Manager-I, State Bank of Indore, Indore in terminating the services of Shri Hiralal S/o. Laxminarayan, Peon, without complying with the provisions of Section 25F of the I.D. Act, 1947, w.e.f. 14-5-1988 is justified? If not to what relief the workman is entitled to?”

2. Admitted facts of the case are that the workman was appointed at Kampel Branch of the State Bank of Indore from 1st June, 1980.

3. The case of the workman is that he has worked for 487 days continuously in a calendar year from 1st June 1980 to 30th September, 1981 and in violation of the provisions of the Sastri Award the services of the workman were illegally terminated and that the workman is entitled for the reinstatement with full back wages.

4. The case of the management is that he was paid wages on daily basis and he was required to work only for six hours in a day and he has worked from 8-6-80 to 18-4-81 with breaks for 166 days from time to time; that thereafter the workman has worked for a period of 80 days on daily wages from 1-5-81 to 29-9-81. It is alleged that the workman was not appointed as full time peon. It is denied that the workman continuously worked for 388 days. It is submitted that the workman was engaged for a specific period and his services were terminated. The management has further submitted that there was no artificial breaks and no violation of laws done by them or the statutory provisions of the Sastri Award.

5. The burden was on the workman to prove that he worked for 240 days in a calendar year and his services were continuous and uninterrupted.

6. There is no document or oral evidence to show that the workman has continuously worked for 240 days in a calendar year. As such, the workman was not entitled for the benefits of the provisions of the I.D. Act under Sec. 25F. His termination was valid. Reference is answered in favour of the management. No order as to costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 16 मार्च, 1995

का. प्रा. 964.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इण्डिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/3/95 को प्राप्त हुआ था।

[संख्या एल—12012/103/90—आई आर बी-III]

पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 15-3-1995.

[No. L-12012/103/90-IRB-III]

P. J. MICHAEL, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)
Case Ref. No. CGIT/LC(R)(183)/1990

BETWEEN

Shri Birdhichand S/o Rambharose Lohia, at/Post Mandi
Gulab Ganj, District Vidisha (MP)-464220.

AND

The General Manager (Operation), State Bank of India,
Local Head Office, Hoshangabad Road, Bhopal
(MP)-462011.

PRESIDED IN: By Shri Arvind Kumar Awasthy.

APPEARANCES:

For Workman: None.

For Management: Shri A. K. Verma

INDUSTRY: Banking. DISTRICT: Bhopal (MP).

AWARD

Dated, February 28, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012/103/90-IR(B-3) dated 7-9-1990 for adjudication of the following Industrial Dispute:—

SCHEDULE

"Whether the termination of services of Shri Birdhichand S/o Rambharose Lohia, ex-site Engineer by the management of State Bank of India, Bhopal w.e.f. 1-8-1989 without complying with the provisions of Section 25F of the Industrial Disputes Act, 1947 is justified? If not, to what relief Shri Lohia is entitled to?"

2. Admitted facts of the case are that the workman, Shri Birdhichand Lohia, was appointed as Site Engineer by order dated 1-12-1986 and his wages were Rs. 1500 p.m. It is also not in dispute that initially the appointment of the workman was for a period of six months only. It is common ground that the workman was appointed for the purpose of looking after the construction work which was undertaken

by the management of the State Bank of India. It is also admitted that the services of the workman was terminated vide order dated 28-10-1988.

3. The case of the workman is that his services were extended and he continued to work upto 31-10-1988; that the management of State Bank of India indulged in unfair labour practice and although the post of the Site Engineer was available and the workman had put in one year continuous service as defined under Section 25-B of the I.D. Act, his services were terminated without any justification by order dated 28-10-1988. The prayer of the workman is that the order of the termination of his service be declared illegal and it be held that he is entitled for reinstatement with full back wages and consequential relief.

4. The preliminary objection of the management is that Shri Birdhichand Lohia is not a workman but as he was appointed on supervisory post his case is not maintainable under the provisions of I.D. Act. It is denied by the management that the workman was in service for continuous period of one year. The averment of the management is that the purpose of the employment of the workman was for a specific work of supervision and it was a contractual nature and no person can claim to be appointed to the particular post as a matter of right when his appointment is simply of contractual nature. The management has prayed that the case of the workman be dismissed with costs.

5. The appointment letter issued by the State Bank of India on 1-12-1986 is admitted by Shri Birdhichand Lohia and marked as Annexure 'A'. From the terms and conditions of appointment, it is clear that he was appointed for supervision of work at Bhopal Project of the State Bank of India. In para 5 of the statement of claim Shri Birdhichand Lohia has clearly admitted that the purpose of his appointment was to look after the construction work undertaken by the management of the State Bank of India. Management has also filed the affidavit of Shri S. S. Naidu and from para 2 of his affidavit it is clear that the appointment of Shri Birdhichand Lohia as Site Engineer was in the supervisory capacity relating to the construction of the building of the management.

6. Consequently, from para 5 of the statement of claim of the workman and from the conditions of the letter of appointment and also from the affidavit of Shri S. S. Naidu it is clear beyond reasonable doubt that Shri Birdhichand Lohia was engaged as Site Engineer on contractual basis and he was not a workman under the definition of the I.D. Act but worked in supervisory capacity. Consequently, Shri Birdhichand Lohia is not entitled to get the required relief in the reference under Section 10 of the I.D. Act.

7. Even on facts, the burden was on the workman to prove that he continuously worked for 240 days in a calendar year. It is no in dispute that initial appointment of Shri Birdhichand Lohia was for period of six months. Consequently, the positive evidence should be there to establish that the workman worked for 240 days continuously and without break. The workman has not adduced any evidence to this effect. As the workman has failed to substantiate the fact that he had worked for more than 240 days continuously in a calendar year he is not entitled to the benefit under Section 25F of the I.D. Act.

8. The claim of Shri Birdhichand Lohia is not tenable on the facts and on law that termination of his service by the management without complying with the provisions of Sec. 25F of the I.D. Act is unjustified. Workman concerned is not entitled for any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 16 मार्च, 1995

का. प्रा. 965.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इन्दौर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/3/95 को प्राप्त हुआ था।

[संख्या एल—12012/19/89—आई आर बी-III]

पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 15-3-1995.

[No. L-12012/19/89-IRB-III]

P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR, (M. P.)

CASE REF. NO. CGIT/LC(R)(105)/1989. BETWEEN

Shri Govind Vallabh Srivastava, Clerk, represented through the M. P. Bank Asthayee Karamchari Sangh, Shivpuri (M. P.).

AND

The Regional Manager, State Bank of Indore, Zonal Office, 4 Maharana Pratap Nagar, Bhopal, (M. P.).

PRESIDED BY :

Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman : None.

For Management : Shri S. K. Rao, Advocate.

INDUSTRY : Banking DISTRICT : Bhopal (MP)

AWARD

Dated : February 28, 1995.

This is a reference made by the Central Government, Ministry of Labour vide its Notification No. L-12012/19/89-IR(B-3), dated 12th May, 1989, for adjudication of the following industrial dispute :—

THE SCHEDULE

“Whether the action of the management of the Regional Manager, State Bank of Indore in not giving opportunity to Shri Govind Vallabh Srivastava, Clerk whose services were terminated on 28-1-1984 for further employment while recruiting fresh hands under Section 25-H of the I. D. Act is justified? If not, to what relief is the workman entitled to?”

2. Admitted facts of the case are that the workman, Shri Govind Vallabh Srivastava, joined the services of the Bank on 16-11-1983 as a clerk.

3. The case of the workman is that he was appointed as a Clerk at the State Bank of Indore, Branch Esagarh, District Guna (M.P.) on 16th November, 1983 on probation. His services were terminated without any order or notice which is violation of para 522(5) of the Sastry Award. The management has not followed the provisions of Section 25-H of the I. D. Act. Therefore termination of his services is illegal. The workman has prayed for regular appointment with effect from 16-11-1983 with full back wages and consequential benefits.

4. The case of the management is that the workman was appointed as a temporary clerk for 74 days from 16-11-1983 to 28-1-1984 and not as a probationer. It is contended by the management that he was appointed against a temporary vacancy caused by the temporary absence of a permanent workman; that the temporary appointment does not create any right for absorption in the permanent service of the Bank. It is denied by the Management that it has violated the provisions of Sastry Award or Section 25-H of the I. D. Act. The management has submitted that the claim of the workman is not tenable and it is liable to be rejected.

5. The workman has sent his statement of claim by post which was taken on record on 26-9-1989. The workman has never appeared in last five years nor he has adduced any oral or documentary evidence in last five years although enumerable dates were given to the workman. There is no proof that the workman was appointed on probation for regular vacancy. Consequently, it cannot be said that the action of the management in terminating the services of Shri Govind Vallabh Srivastava, Clerk, w.e.f. 28-1-1984 and not providing him employment further was unjustified. The workman is not entitled for any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer.

नई दिल्ली, 16 मार्च, 1995

का. आ. 966.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इन्दौर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-3-95 को प्राप्त हुआ था।

[संख्या एल—12012/229/89—आई आर बी-II]

पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 16th March, 1995

S.O. 966.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the

Central Government Industrial Tribunal, Jabalpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Indore and their workmen, which was received by the Central Government on the 15-3-95.

[No. L-12012|229|89-IRB-3]
P. J. MICHAEL, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL
JABALPUR (MP)

TRIBUNAL-CUM-LABOUR COURT,
Case Ref. No. CGIT|LC(R) (277)|1989

BETWEEN

Shri Jagdish Prasad, Peon, represented through the General Secretary, M. P. Bank Asthai Karamchari Sangh, Shivpuri (MP).

AND

The Regional Manager, State Bank of Indore, Zonal Office, Roor House, Maharana Pratap Nagar II, Bhopal (MP).

PRESIDED IN : By Shri Arvind Kumar Awasthy.
APPEARANCES :

For Workman : None.

For Management : Shri S. K. Rao, Advocate.

INDUSTRY : Banking **DISTRICT :** Bhopal (MP).

AWARD

Dated; February 28, 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-12012|229|89-IR(B-3) dated 10-12-1989 for adjudication of the following industrial dispute :—

SCHEDULE

“Whether the action of the management of the R. M., State Bank of Indore, Bhopal in not providing employment to Shri Jagdish Prasad Gwal, Peon, after the 16-4-1983, and whether his termination, is justified ? If not to what relief the workman is entitled to ?

2. Admitted facts of the case are that Shri Jagdish Prasad was appointed as a Peon by the State Bank of Indore, Shivpuri on 1-2-83 and that his services were terminated without any notice or the termination order.

3. The case of the workman is that he was appointed without notice and under sec. 25H no opportunity was given to him and the persons who were below in list were given appointment. The workman has claimed regular appointment with effect from 16-4-83 with all consequential benefits.

4. The case of the management is that the workman was appointed for a specific period in a temporary vacancy and his services came to an end on expiry of the contractual period which was only of 75 days; that after the expiry of the contractual period the workman is not entitled for any relief under the provisions of Sec. 25G & H of the I.D. Act.

5. The workman has filed the statement of claim on 5-1-90 and in last five years even after enumerable adjournments the workman never appeared nor adduced any oral or documentary evidence to substantiate his claim. The workman has failed to prove his case.

6. Consequently, it cannot be said that the action of the management in not providing employment to Shri Jagdish Prasad Gwal and terminating his services were unjustified or improper. He is not entitled to any relief. Reference is answered in favour of the management. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer

नई दिल्ली, 20 मार्च, 1995

का. आ. 967.—जबकि केन्द्रीय सरकार का मत है कि परमाणु उर्जा के विनिर्माण अथवा उत्पादन में लगे उद्योग को सार्वजनिक हित में औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची में जोड़ना समीचीन है।

अब इस प्रकार औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 40 धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम में क्रम सं. 2क के पश्चात प्रथम अनुसूची में निम्नलिखित मद जोड़ती है, अर्थात् :—

“28 न्यूक्लीयर ईंधन अथवा संघटकों, भारी पानी और सम्बद्ध रसायनों, तथा परमाणु उर्जा का विनिर्माण अथवा उत्पादन करने वाले औद्योगिक प्रतिष्ठान”।

[सं. एस-11014/1/93 आई आर(पीएल)]

ए. घोष, संयुक्त सचिव

New Delhi, the 20th March, 1995

S.O. 967.—Whereas the Central Government is of opinion that it is expedient in the public interest to add to the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) the industry engaged in the manufacturing or production of Atomic Energy.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 40 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby adds the following item to the First Schedule to the said Act after Serial No. 27, namely :

“28. Industrial establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and Allied Chemicals, and Atomic Energy”.

[No. S-11014|1|93-IR(PL)]

A. GHOSH, Jt. Secy.

नई दिल्ली, 21 मार्च, 1995

का. आ. 968.—कर्मचारी राज्य बीमा अधिनियम 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 1-4-1995 को उस तारीख से रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय -4 धारा 44-45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है और (अध्याय 5 और 6 धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है के उपबन्ध आन्ध्र प्रदेश राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात् :-

(1) "जिला विशाखापटनम के मंडल भी मुनीपटनम में राजस्व ग्राम भीमुनीपटनम, बलन्दाभुमुल, कुमारपलेम, चिपाडा, अमानम, अन्नावरण, मुलाकुडु, डाकामारी, बोदामेट्टापलेम, माजीवालासा, सिंगनबन्दा, थाटीटूरू, नागरापूपलेम, संगीवालासा, थालावालासा, जयथीवानी आग्रहूरम के अन्तर्गत आने वाले क्षेत्र ;

(2) जिला विशाखापटनम के मंडल आनन्दपुर में राजस्व ग्राम आनन्दपुरम, पेडीपलेम, पेलान्की, बेमुलावालासा, लोङ्गलवानीपलेम के अन्तर्गत आने वाले क्षेत्र";

(3) जिला विजयवनगरम के मंडल भोगापुरम में राजस्व ग्राम पोलीपाली, मण्डा, राजपुलावा, रवडा सवराबिल्ली, जिगावालासा और डेनकटा मंडल में राजस्व ग्राम मोडावालासा के अन्तर्गत आने वाले क्षेत्र "

[संख्या एस-38013/20/95-एस एस-1]

जे. पी. शुक्ला, अवर सचिव

New Delhi, the 21st March, 1995

S.O. 968.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 1995 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely :—

(i) "The areas falling within the revenue villages of Bheemunipatnam, Valanda Bhumulu, Kummurapalem, Chippada, Amanam, Annavaram, Mulakudu, Dakamari, Bodamettapalem, Majjivalasa, Singanabanda, Thatituru, Nagarapupalem, Sangivalasa, Thallavalasa Jayathivani Agraharam in Bheemunipatnam mandal in Visakhapatnam District;

(ii) "The areas falling within the revenue villages of Anandapuram, Peddipalem, Vellanki, Vemulavalasa, Lodagalavanipalem in Anandapuram mandal in Visakhapatnam District.

(iii) "The areas falling within the revenue villages of Polipalli, Mapada, Rajapulova, Ravada, Savara Villi, Lingavalasa in Bhogapuram mandal and revenue villages of Modavalasa in Denkada mandal of Vijayanagaram district."

[No. S-38013/20/95-SS.1]

J. P. SHUKLA, Under Secy.

नई दिल्ली, 21 मार्च, 1995

का. आ. 969.—केन्द्रीय सरकार कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91क के साथ पठित धारा 77 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त अधिनियम प्रवर्तन से मैमर्स हिन्दुस्तान जिक लि. (चदेरिया लैंड जिक स्प्रेडर) चित्तौड गढ़ नियुक्त नियमित कर्मचारियों को 22 जून, 1991 से 30-9-97 तक की अवधि के लिए छूट प्रदान करती है।

2. पूर्वोक्त छूट की शर्तें निम्नलिखित हैं अर्थात् :-

(1) पूर्वोक्त कारखाना, जिसमें कर्मचारी नियोजित है एक रजिस्टर रखेगा, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदामिधान दिखाये जायेंगे,

(2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी सुविधाएँ प्राप्त करते रहेंगे जिनकी पाने के लिए वे इस अधिनियम द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अधिदायों के आधार पर हकदार हों जाते,

(2) छूट प्राप्त अवधि के लिए यदि कोई अभिदाय पहले ही किए जा चुके हों तो वे वापस नहीं किए जाएंगे

(4) उक्त कारखाने का नियोजक, उस अवधि की बाबत जिसके दौरान उस कारखाने पर उक्त अधिनियम प्रवर्तमान था (जिसे इसमें इसके पश्चात "उक्त अवधि" कहा गया है), ऐसी विवरणियाँ ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण विनियम 1950 के अधीन उसे उक्त अवधि की बाबत देती थी,

(5) निगम द्वारा उक्त अधिनियम की धारा 45 की उप धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षण, या निगम का इस नियमित प्राधिकृत कोई अन्य पदधारी:-

(i) धारा 44 की उप धारा (1) के अधीन उक्त अवधि की बाबत दी गई किसी विवरणी की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ

(ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम 1950

द्वारा यथा अपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गए थे या नहीं या

- (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिए गए उक्त फायदों को, जिसके प्रतिफल स्वरूप इस अधिनियम के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हक्कादार बना हुआ है या नहीं या
- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबन्ध प्रवृत्त थे, ऐसे किन्हीं उपबन्धों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :—
- (क) प्रधान या अव्यवहित नियोजक के अपेक्षा करने कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षण या अन्य पदाधारी आवश्यक समझता है।
- (ख) ऐसे प्रधान या अव्यवहित नियोजक के अधिभोगाधीन किसी कारखाने स्थापन, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियाँ और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदाधारी के समक्ष प्रस्तुत करे और उनकी परीक्षा करते दे, या उन्हें ऐसी जानकारी दे, जिसे वे आवश्यक समझते हैं, या
- (ग) प्रधान या अव्यवहित नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति की जो ऐसे कारखाने स्थापन, कार्यालय या अन्य परिसर में पाया जाए या ऐसे किसी व्यक्ति की जिसके बारे में उक्त निरीक्षक या अन्य पदाधारी के पास यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना या
- (घ) ऐसे कारखाने स्थापन, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखावही या अन्य दस्तावेज की नकल तैयार करना या उससे उद्धरण लेना।

[संख्या एस-38014/13/93-एस एस-1]

जय प्रकाश गुप्त, अवसर सचिव

(स्पष्टीकरण ज्ञापन)

इस मामले में छूट को भूतलक्षी प्रभाव देना आवश्यक हो गया है क्योंकि छूट के आवेदन पर कार्यवाही करने में समय लगा था किन्तु छूट को भूतलक्षी प्रभाव देने में किसी भी व्यक्ति के हितपर प्रतिकूल प्रभाव नहीं पड़ेगा।

New Delhi, the 21st March, 1995

S.O. 969.—In exercise of the power conferred by section 88 read with section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of M/s. Hindustan Zinc Limited (Chanderiya Lead Zinc Smelter) Chittorgarh from the operation of the said Act for a period with effect from the 22nd June, 1991 to the 30th September, 1997.

2. The above exemption subject to the following conditions namely :—

- (1) The aforesaid establishment wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees;
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refunded;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred to as the said period), such returns in such form and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;
- (5) Any inspector appointed by the Corporation under Sub-section (1) of Section 45 of the said Act, or other official of the Corporation authorised in this behalf shall, for the purpose of :—
 - (i) verifying the particulars contained in any return submitted under sub-section (1) of Section 44 for the said period; or
 - (ii) ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or
 - (iii) ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or
 - (iv) ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to empowered to :
 - (a) require the principal or immediate employer to furnish to him such information as he may consider necessary; or

- (b) enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found incharge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary, or
- (c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee, or
- (d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other document maintained in such factory, establishment, office or other premises.

[File No. S-38014/13/93/SS-I]
J. P. SHUKLA, Under Secy.

EXPLANATORY MEMORANDUM

It has become necessary to give retrospective effect to the exemption in this case as processing of the application for exemption took time. However, it is certified that the grant of exemption with retrospective effect will not affect the interest of any body adversely.

नई दिल्ली, 22 मार्च, 1995

का. आ. 970.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा 1-4-1995 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 धारा 44 और 45 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है और अध्याय 5 और 6 धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है के उपबन्ध राजस्थान राज्य के निम्नलिखित क्षेत्र में प्रवृत्त होंगे, अर्थात्

“सिरोही रोड क्षेत्र”

“जिला सिरोही में पिडवाडा नगर पालिका सीमाओं के सिरोही मार्ग के अन्तर्गत आने वाले क्षेत्र”।

[संख्या एस-38013 /19/95-एसएस I]

जे. पी. शुकला, अवर सचिव

New Delhi, the 22nd March, 1995

S.O. 970.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April, 1995 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which

already been brought into force) and Chapter V and VI (except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Rajasthan namely :—

“The Sirohi Road areas within the Municipal limits of Pindwara in District Sirohi”

[No. S-38013/19/95-SS.I]
J. P. SHUKLA, Under Secy.

नई दिल्ली, 21 मार्च, 1995

का. आ. 971.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच प्रवृत्त में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-3-95 को प्राप्त हुआ था।

[संख्या एन-12012 /132 /89-आईआर बी III/ बी-I]
पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 21st March, 1995

S.O. 971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen which was received by the Central Government on 16-3-1995.

[No. L-12012/132/89-IR(B-III)/B-I]
P. J. MICHAEL, Desk Officer.

ANNEXURE

BEFORE SHRI M. S. SULLAR, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM-
LABOUR COURT, CHANDIGARH

Case No. I.D. 198/89

Ashok Kumar Vs. State Bank of India

For the Workman : Shri P. P. Trikha.

For the Management : M/s. Sharmila Malkani.

AWARD

Dated the 1st March, 1995

The brief facts relevant for the disposal of the present reference are that the services of Ashok Kumar Ex-messenger were terminated by the respondent management w.e.f. June 1987. He has challenged his termination order by way of the present reference petition.

In the wake of industrial dispute raised by the workman, U/S 10(1)(d) of the Industrial Disputes Act 1947, (hereinafter to be referred as the Act), the Central Govt. vide letter No. L-12012/132/89-I.R. (B-3) dated 20-11-89, has referred the following dispute to this Tribunal for adjudication :

“Whether the management of State Bank of India in relation to their Faridabad Branch in terminating the services of Sh. Ashok Kumar Ex-messenger, w.e.f. June 87 is just, fair and legal? If not what relief the worker concerned is entitled to and from what date?”

The case set up by the petitioner, in brief, in so far as relevant is that he had worked for 266 days from 1-4-1986 to 1-6-1987 but the respondent management has terminated his services w.e.f. 1-6-1987 without any reason. Leveling a variety of allegations against the management, according to the petitioner, the action of the management is in comp-

lete violation of the provisions of the Act, Sastry Award, Desai Award and Bipartite Settlement. On the footing of aforesaid pleadings, the petitioner claimed his reinstatement with all other service benefits.

The management has contested the claim of the petitioner and filed the written statement, inter alia stoutly denying the allegations of the petitioner. That being so, the management prayed for the dismissal of the reference petition.

During the pendency of the present reference, the petitioner and the management has mutually settled the dispute. The rep. of the management in her recorded statement, stated that the appointment to the petitioner has been given on the understanding that he will withdraw the reference petition. The management has given him fresh appointment and he is peacefully working in the bank.

The representative of the petitioner has also made the statement that the petitioner has already been re-appointed on regular basis and is working with the management peacefully, so he does not want to prosecute the present reference which may be declined.

In this view of the matter and in view of the statement of the parties, since the matter had already been settled amicably between the parties and the management had already given the petitioner-reappointment, so no dispute remains to be resolved. Consequently reference petition is disposed of accordingly. The appropriate Govt. be informed.

Chandigarh.

1-3-1995

M. S. SULLAR, Presiding Officer

आदेश

नई दिल्ली, 21 मार्च, 1995

का. था. 972.—जबकि स्टेट बैंक आफ इंडिया, गुन्टूर के प्रबन्धन के बारे में नियोजकों और उनके कर्मकारों जिसका प्रतिनिधित्व भारतीय स्टेट बैंक कर्मचारी संघ, हैदराबाद सकिल ने किया, के बीच एक औद्योगिक विवाद विद्यमान है।

और जबकि उपर्युक्त नियोजक तथा उनके कर्मकार औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10क की उप धारा (i) के अंतर्गत एक लिखित करार द्वारा उक्त विवाद को न्याय निर्णयन के लिए भेजने पर सहमत हैं और उक्त मध्यस्थता करार की एक प्रति केन्द्र सरकार को भेज दी गई है ;

अतः अब उपर्युक्त अधिनियम की धारा 10क की उप धारा (3) के अनुसरण में केन्द्र सरकार एतद्द्वारा उक्त करार को प्रकाशित करती है।

करार

(औद्योगिक विवाद अधिनियम, 1947 की धारा 10क के अंतर्गत)

पक्षकार

पक्षकारों के नाम

1. नियोजक के प्रतिनिधि: श्री जी. जे. एम. बनावडा शा, प्रबन्धक, स्टाफ, स्टेट बैंक आफ इंडिया आंचलिक अधिकारी, विजयवाडा

2. कर्मकार के प्रतिनिधि: श्री जी. जे. गेषगिरी राव, उप महासचिव, एम. बी. आई कर्मचारी संघ, हैदराबाद सकिल, बैंक स्ट्रीट हैदराबाद ;

पक्षकारों के मध्य निम्नलिखित विवाद को श्री जे. कनकेश्या संयुक्त मुख्य श्रम आयुक्त (के.) के पास न्याय-निर्णयन के लिए एतद्द्वारा भेजने पर सहमति हुई है :

- (i) विवाद के विशिष्ट विषय एम. बी. आई. / इंडस्ट्रियल एस्टेट शाखा, गुन्तूर के श्री वाई रत्न साई एक्स टैन्वर की सेवाओं को कथित गैर-कानूनी ढंग में समाप्त किया जाना।
- (ii) अंतर्गत प्रतिष्ठान अथवा श्री जी. एम. सत्यामारायण, का नाम और पता सहित विवाद सहायक महाप्रबंधक एम. बी. उपक्रम वाले पक्षकारों के आई. आंचलिक कार्यालय, ब्योरे विजयवाडा
- (iii) यूनियन का नाम, यदि कोई हो जो कर्मकार का प्रतिनिधित्व कर रही है श्री जी. जे. गेषगिरी राव, उप महासचिव, एम. बी. आई. कर्मचारी संघ, हैदराबाद सकिल, हैदराबाद।
- (iv) प्रभावित उपक्रम में नियोजित कर्मकारों की कुल संख्या शून्य
- (v) विवाद से प्रभावित अथवा प्रभावित होने वाले कर्मकार शून्य की अनुमानित संख्या

विवादक इस मामले में अपना पंचाट तीन माह अथवा हम पक्षकारों के मध्य परस्पर लिखित समझौते द्वारा लिखित तौर पर बढाई गई अवधि के भीतर दे देगा यदि उपर्युक्त कथित अवधि के भीतर पंचाट नहीं दिया जाता है तो मध्यस्थता को भेजा गया मामला स्वतः ही समाप्त हो जाए और हम नए सिरे से मध्यस्थता के लिए बार्ता करने को स्वतंत्र होंगे।

पक्षकारों के हस्ताक्षर

प्रबन्धन के प्रतिनिधि कर्मकार के प्रतिनिधि
ह. ह.

(जी.जे. एस बनावडा शा) (जी. जे. गेषगिरी राव)

गवाह :

1. (आई. प्रमन्ता रानी) आञ्चलिक
2. (पी. प्रान्सिस) अ. शे. लि.

मध्यस्थ की सहमति

सहायक श्रम आयुक्त (के. विजयवाड़ा के दिनांक 7-12-94 के पत्र सं. 7/9/94-ए. एल. सी. बी. जेड. ए. की ओर ध्यान आकर्षित किया जाता है जिसमें सहायक श्रम आयुक्त (के.) ने सूचित किया है कि स्टेट बैंक ऑफ इंडिया के प्रबंधन और कर्मचारी संघ, हैदराबाद सकल उक्त विवाद को उनके विवाचन के लिए सन्निहित करने को सहमत हुए हैं।

नै एतद्वारा उक्त विवाद में एक मध्यस्थ बनने के लिए अपनी सहमति देता हूँ।

ह.

मध्यस्थ

[सं. एल 12012/46/95-आई आर बी II]
पी. जे. माईकेल, डेस्क अधिकारी

ORDER

New Delhi, the 21st March, 1995

S.O. 972.—Whereas an industrial dispute exists between the employers in relation to the management of State Bank of India, Guntur and their workmen represented by State Bank of India Staff Union, Hyderabad Circle.

And whereas the said employers and their workmen have by written agreement under Sub-section (1) of section 10-A of the Industrial Disputes Act, 1947 (14 of 1947) agreed to refer the said dispute to arbitration and have forwarded to the Central Government a copy of the said arbitration agreement;

Now, therefore, in pursuance of sub-section (3) of Section 10-A of the said Act, the Central Government hereby publishes the said agreement.

AGREEMENT

(UNDER SECTION 10-A OF THE INDUSTRIAL DISPUTE ACT 1947)

BETWEEN

NAME OF THE PARTIES

1. Representing Employer : Shri G.J.S. Bernard Shaw, Manager, Staff, State Bank of India, Zonal Officer Vijayawada.
2. Representing Workman : Sh. G. Seshagiri Rao, Dy. General Secretary, SBI Staff Union, Hyderabad Circle Bank Street, Hyderabad.

It is hereby agreed to by the parties to refer the following industry :—Shri J. Eanakaish, Jt. CLC (C) all dispute to the arbitration of :

- (a) Specific matters in dispute : Alleged illegal termination of service of Sh. Y. Ratna Sai, Ex-Teller, SBI/Industrial Estate Branch, Guntur.
- (ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved : Sri G. M. Satyanarayana Asstt. General Manager, SBI Zonal Office, Vijayawada.
- (iii) Name of the union, if any representing the workmen in question : Sh. G. Seshagiri Rao, Dy. General Secretary, SBI Staff Union, Hyderabad Circle, Hyderabad.
- (iv) Total number of workman employed in the undertaking affected : NIL.
- (v) Estimated number of workman affected or likely to be affected by the dispute. NIL.

The arbitrator shall make his award within a period of three months or within such further time as is extended by mutual agreement between us in writing. In case the award is not made within the period aforementioned, the reference to the arbitration shall stand automatically cancelled and we shall be free to negotiate for fresh arbitration.

Signature of the parties

Representing Management :
Sig.

(G.J.S. Bernard Shaw)

Representing workman :
Sig.

(C. Seshagiri Rao)

WITNESS :

1. (I. Prasanna Rani) Steno
2. (P. Francis) LDC

CONSENT OF THE ARBITRATOR

Reference is invited to the letter No. 7/9/94-ALC-BZA dated 7-12-94 from ALC(C) Vijayawada wherein the ALC(C) has requested that the management of State Bank of India and Staff Union, Hyderabad Circle have agreed to refer the above dispute for my arbitration.

I hereby give my consent to be an Arbitrator in the above dispute.

Sd/-

ARBITRATOR

[No. I-12012/46/95-IRBII]

P. J. MICHAEL, Desk Officer.

नई दिल्ली, 22 मार्च, 1995

का. आ. 973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मसम सिकुरिटि अरगनाईजेसन एन्ड पारसोनाल सर्विज, गोवा के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, वास्वे के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-03-95 को प्राप्त हुआ था।

[संख्या ई (497) /85-कन्-II - आई आर (मिस.)]
बि. एम. डेविड, डेस्क अधिकारी

New Delhi, the 22nd March, 1995

S.O. 973.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal, No. 2, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Security Organisation & Personnel Service, Goa and their workmen, which was received by the Central Government on 22-3-1995.

[No. E(497)/85-Con-II/IR(Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

Present :

Shri S. B. PANSE, Presiding Officer.

REFERENCE NO. CGIT-2/25 OF 1986

Employers in relation to the management of M/s. Security Organisation & Personnel Services, Goa.

AND

Their Workmen

APPEARANCES:

For the Employers : 1. Mr. G. M. Nagaroenkar, Advocate
2. Mr. Charles D'Souza Representative.

For the Workmen : Mr. Subhash Naik, Representative.
Bombay, the 28th February, 1995

AWARD

The Government of India, Ministry of Labour, New Delhi, by its letter No. B(49)/85-Con. II dated March, 1986 referred to the following industrial dispute for adjudication :

SCHEDULE

"Whether the action of the management of M/s. Security Organisation & Personnel Services, Vasco-da-gama in terminating the services of the 21 security guards w.e.f. the date given against their names in Annexure 'A' to this schedule is legal and justified? If not, what relief the workmen concerned are entitled to and from what date?"

2. The General Secretary, Goa Mining Labour Welfare Union filed his statement of claim.

3. The management opposed the claim by a written statement and later on by a rejoinder. My Predecessor framed issues in the matter.

4. On 21-2-1995, the parties to the reference filed a settlement informing the Tribunal that as the matter is settled the consent award in terms of the settlement may be passed. I had gone through the terms of the settlement. The settlement is in the interest of the parties which I accept. It is therefore not necessary to answer the issues or to discuss the matter in detail. Hence I pass the following order : in terms of the settlement at Exh. 12.

ORDER

1. The Management of M/s. Security Organisation & Personnel Services, Goa Mining Labour Welfare Union agrees to pay totally a sum of Rs. 30,000/- (Rupees thirty thousand only) as full and final settlement of their claims against the management under the said reference case No. CGIT 2/25/86.
2. The said amount of Rs. 30,000/- (Rupees thirty thousand only) shall be paid by the management to the union, favouring "Subhash Naik", Secretary, Goa, Mining Labour Welfare Union" on or before 30th November 1993 through a Cheque/Draft drawn on Corporation Bank, Vasco-da-gama Branch, Goa. The union will issue proper receipt for such payment.
3. The Union/Workmen do hereby agree that all their claims against the Management are hereby conclusively settled and they have no other claim or demand of whatsoever nature against the Management.

Lt. 28-2-95

S. B. PANSE, Presiding Officer.

नई दिल्ली, 22 मार्च, 1995

का. आ. 974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक

विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16 मार्च, 1995 को प्राप्त हुआ था।

[संख्या एल 12012/285/89 आई आर बी III/बी]
पी. जे. माईकल, डेस्क अधिकारी

New Delhi, the 22nd March, 1995

S.O. 974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 16-3-95.

[No. L-12012/285/89-IR(B-III)/B-I]
P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SHRI M. S. SULLAR, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH
Case No. I. D. 20/90

Rajender Parsad Vs. State Bank of India

For the workman : Shri P. P. Trikha.

For the management : Ms. Sharmila Malkani.

AWARD

Dated, the 1st March, 1995

The brief facts relevant for the disposal of the present reference are that the services of Rajender Parsad ex-messenger were terminated by the respondent management w.e.f. 24-5-84. He has challenged his termination order by way of the present reference petition.

In the wake of industrial disputes raised by the workman, U/S. 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act), the Central Government vide letter No. L-12012/285/89-I.R., (B. III), dated 22nd January, 1990, has referred the following dispute to this Tribunal for adjudication :

"Whether the management of State Bank of India in relation to their Faridabad branch in terminating the services of Sh. Rajender Parsad Ex-messenger w.e.f. 24-5-84 is just, fair and legal? If not, to what relief the worker concerned is entitled to and from what date?"

The case set up by the petitioner, in brief, in so far as relevant is that he had worked for 421 days from 23-11-1982 to 24-5-1984 but the respondent management has terminated his services w.e.f. 24-5-84 without any reason. Levelling a variety of allegations against the management, according to the petitioner, the action of the management is in complete violation of the provision of the Act, Sastry Award, Desai Award and Bipartite Settlement. On the footing of aforesaid pleadings, the petitioner claimed his reinstatement with all other service benefits.

The management has contested the claim of the petitioner and filed the written statement, inter alia stoutly denying the allegations of the petitioner. That being so, the management prayed for the dismissal of the reference petition.

During the pendency of the present reference, the petitioner and the management has mutually settled the dispute. The rep of the management in her recorded statement, stated that the appointment to the petitioner has been given on the understanding that he will withdraw the reference petition. The management has given him fresh appointment and he is peacefully working in the bank.

The representative of the petitioner has also made the statement that the petitioner has already been re-appointed on regular basis and is working with the management peacefully, so he does not want to prosecute to present reference which may be declined.

In this view of the matter and in view of the statement of the parties, since the matter had already been settled amicably between the parties and the management had already given the petitioner-reappointment, so no dispute remains to be resolved. Consequently reference petition is disposed of accordingly. The appropriate Govt. be informed accordingly.

Chandigarh.

1-3-1995

M. S. SULLAR, Presiding Officer

नई दिल्ली, 23 मार्च, 1995

का. प्रा. 975.—औद्योगिक विवाद अधिनियम, 1947 1947 का 14 की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-95 को प्राप्त हुआ था।

[संख्या एल 12012/244/87 डी-2 (ए) आई आर बी-2]
बी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 23rd March, 1995

S.O. 975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on 22-3-1995.

[No. L-12012/244/87-D. II(A)/IRB II]
V. K. SHARMA, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I AT BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer
Reference No. CGIT-26 of 1988

PARTIES :

Employers in relation to the management of Dena Bank.
AND
Their Workmen

APPEARANCES :

For the Management.—Shri R. S. Rai, Advocate.
For the Workmen.—Shri Dharap, Advocate.

INDUSTRY : Banking STATE : Maharashtra.
Bombay, dated the 9th day of June, 1994

AWARD (Part-I)

The Government of India, Ministry of Labour, New Delhi by letter dated 27-4-1988 made the following reference to this Tribunal for adjudication under Section 10(1)(d) read with Section 2A of the Industrial Disputes Act, 1947.

“Whether the action of the management of Dena Bank in discharging from service Shri Anant N. Padivar, Clerk, w.e.f. 31-7-82 is justified? If not, to what relief is the workman entitled?”

2. Admitted case is that Shri Padivar was an employee of Dena Bank having been employed on 16-10-1972. He has worked in the Personnel Department for 5 1/2 years, was on his request transferred to City Region and was posted to New Marine Lines Branch on 11-7-1978. The Branch Manager called and informed him that a cheque for Rs. 3000 issued by him on his Savings Bank Account has been presented by the Syndicate Bank, Ghad-deo Bhyander on 21-2-1980. He was further informed that

the same has not been debited and the said cheque was misplaced. The Bank Manager asked him to deposit the said amount in the Savings Bank Account which he agreed to do within 3 days and explained the Branch Manager the circumstances in which he had issued the same cheque. Charges were levelled against him and a domestic enquiry was instituted. The Enquiry Officer after conducting the enquiry held him guilty. Disciplinary Authority acted upon it and imposed punishment of dismissal from the services of the Bank with immediate effect. An appeal preferred against this decision was dismissed and the order of punishment of discharge was confirmed. It is thereafter, that he approached Assistant Labour Commissioner (Central) and a failure report being received by the Government, present dispute has come to be made for adjudication.

3. His grievance is that he was not afforded adequate opportunity by the Enquiry Officer to defend himself and that the findings are perverse in nature. He further stated that the charges were not established.

4. According to him his cousin Shri S. R. Bhat had taken a loan of Rs. 5000 and he (delinquent) had stood surety for the loan. The said loan was from Shri Jagannivas Bhat Proprietor Mahalaxmi Parilmal Works granted by the Syndicate Bank. Since he was a surety finding that his Cousin had not paid instalments he paid one or two instalments and thereafter, stopped the payment. He contacted Shri S. R. Bhat, his Cousin, and requested him to make payment. Though Shri Bhat promised to do and to trace the whereabouts of Mr. Jagannivas Bhat he could not trace him. He promised to deposit the same in the Savings Bank Account. Against this background of talk he issued a cheque for Rs. 3000 with a clear understanding that first he would deposit the amount in his account and then only would deposit the cheque in the Syndicate Bank. No indication was received from the Syndicate Bank and therefore he thought that his cousin was successful in tracing Shri Jagannivas Bhat and recover the loan amount from him. On 19-7-1980, the Branch Manager called him and thereafter, he contacted Shri Bhat who told him that he deposited the cheque in the Syndicate Bank on the assurance of Shri Jagannivas Bhat to credit the amount in his account.

5. He gave in writing to the Branch Manager on the same day that is 19-7-1980 that by Tuesday the 22nd July, 1980 he would deposit the amount of Rs. 3,000 in his account and on 26th July 1980 the Branch Manager issued him a letter regarding the letter dated 19-7-1980 calling upon him to furnish explanation about the same. On 4-8-1980 he submitted his explanation in details mentioning the circumstances in which the cheque came to be issued. However he was chargesheeted with having committed a misconduct by issuing a cheque and making entry in the General Ledger entries for balancing the day-book of the branch. It was also alleged that he removed the cheque issued by him before it was debited to his said Savings Bank Account with a view to balance the day-book in the Sunday Register he has recorded the said entry of Rs. 3,000 under D. D. payable account making a duplicate entry for draft No. 4746500 issued by Navsari Branch, received by your branch and already debited earlier on 20-2-1980. This was a gross misconduct in terms of para 19.5(i) of the Bipartite Settlement and for which he was liable for appropriate punishment. He was called upon to give explanation failing which it would be presumed, he was told, that he had no explanation to offer and further necessary disciplinary action would be taken against him.

6. As stated earlier the Enquiry Committee held him guilty and accepting the report he was punished and his appeal was dismissed. He has raised the Industrial Dispute by challenging the Enquiry Committee's findings and complained of inadequate opportunity given to him to defend himself.

7. The management has filed written statement to this statement of claim filed by the delinquent Shri Padivar. It is stated that he issued a cheque for Rs. 3000, that he did not have sufficient balance in his account on that day when the cheque was received from Syndicate Bank for clearing on 21-2-1980, he removed the same before the cheque was debited to his account at the branch and in order to

suppress the said act he made a double entry of a draft received on the previous day by the branch and thereby tampered the day book on 21-2-1980. He thus tampered with the Bank's record to conceal his fraudulent act. It was pursuant to the circular that is dated 20-8-1980 that the Syndicate Bank, Bhayander Branch on 19-7-1980 informed that they had presented on 21-2-1980 for clearing the cheque in question which was drawn on Savings Bank Account, No. 657 standing in the name of Shri Padiyar, favouring M/s. Mahalaxmi Patimal Works. When Shri Padiyar was asked to explain the circumstances he unconditionally undertook to deposit the amount for payment of the cheque in question and also admitted to having removed the cheque before the same could be debited to his account. It is for these acts that chargesheet was issued and after the conclusion of the enquiry in which he was held guilty, punishment or discharge from the services of the bank was given but that was also done after giving him an opportunity of personal hearing on the proposed punishment. His appeal was considered and finding that there was no merit, it was dismissed and the punishment confirmed.

8. It is stated that the allegations made by the workman that the enquiry was not free and fair are not true. It is stated that it was in accordance with the principles of natural justice and enquiry proceedings have been produced for that purpose. It is further contended that relevant witnesses were examined and the Enquiry Committee was satisfied that the charges were proved and Enquiry Committee had given him adequate opportunity to cross-examine witnesses and defend himself. It is further stated that there could be no direct evidence on the point that he removed the cheque and it was a matter of inference from the facts proved. Besides, it is contended that what is required to be proved in a domestic enquiry is preponderance of probabilities and the degree of proof is not as high as is expected in a criminal trial. The submission is that the findings recorded are reasonable which would be reached by a prudent person.

9. Additional written statement has been filed and it is stated that the Tribunal may frame a preliminary issue about fairness and propriety of the domestic enquiry held against Shri Padiyar and if it finds that it was not fair and proper then the Tribunal be pleased to permit the Bank to lead evidence to prove the charges levelled against the workman. To this course learned counsel for the workman had no objection. In fact it is also his submission that preliminary issue be framed and decided as proposed by the management. It was also agreed that no oral evidence is to be recorded and the finding on this preliminary issue is to be given on the basis of the material on record. Written submissions have been made by both sides.

10. I may mention that on 18th of October, 1993, when the matter was fixed this Tribunal had before it the written submission made on behalf of Shri Padiyar. On behalf of the workman written arguments are submitted on 28th October, 1993.

11. The point that arises for consideration at this stage before me, is whether the enquiry is vitiated on the ground urged by the workman. It is the case of the management that the delinquent employee issued a cheque and when it came for clearance removed it and in order to conceal this fact he manipulated the record by making a double entry for the same draft. When this was detected, he was given a notice and thereafter chargesheeted. The charges framed against him have been set out and there is no dispute on the point that the enquiry was held on those charges. The management's contention is that Shri Padiyar was given adequate opportunity to defend himself. He engaged a 'friend' to represent him in the enquiry and his friend cross-examined the witnesses examined on behalf of the management. The fact that he issued a cheque, fact that it came for clearance, the fact that it was not debited to the account and the fact that he had no amount to his credit are not at all disputed. It is also not in dispute that when he was questioned about it he promised to deposit the amount and did so. The management examined witnesses necessary to prove the charges and on the basis of

that evidence and the admitted position the Enquiry Committee concluded that he was proved guilty. He was, thereafter, given a show cause notice why penalty of dismissal be not imposed and thereafter the Disciplinary Authority imposed penalty not of dismissal but of discharge from services. The same was served on him and thereafter he appeared but unsuccessfully. The management's contention therefore, is that this would go to show that principles of natural justice have been followed by giving him chargesheet mentioning the charges levelled against him, giving an opportunity to defend himself. He availed of that opportunity engaged a representative to defend him and cross-examined witnesses produced on behalf of the management. He thus, was treated fairly by the management and all that was expected of the management has been done. The submission, therefore, is that findings on the preliminary issue be recorded in favour of the management.

12. On going through the submissions made on behalf of the delinquent, I find that the first grievance that he makes is that Shri R. J. Shah, the Enquiry Officer conducted the enquiry with undue haste and that was apparent from reading the evidence recorded before the Enquiry Officer. I have gone through the proceedings and I do not find any indication to show of any haste much less undue haste done by Enquiry Officer. Learned counsel, is not able to point out any material to substantiate this part of the grievance. 26 dates were fixed and out of which on 12 occasions adjournment were required to be given for various reasons. The enquiry commenced on 27-4-1981 and completed on 8-2-1982, during the course of which the Presenting Officer examined four witnesses and 11 documents. The defence representative Shri M. M. Pednekar, General Secretary, did not produce any witness but produced documents and made written submissions and counter arguments. I find therefore, that there is no basis whatsoever for making this grievance.

13. The second grievance is that the Enquiry Officer took undue interest in respect of the evidence which has been recorded before him by the said Presenting Officer and the extension of the said submission is that the Enquiry Officer took upon himself the task of proving the alleged charges. I think it is the duty of the Enquiry Officer to find out if there is any material in support of the charges levelled. He cannot fail to discharge that duty which is cast upon him by virtue of his appointment as an Enquiry Officer whose duty it is to enquire. I for one feel that it is expected of an Enquiry Officer to collect material for and against in respect of the charges levelled. It is not seen nor does it appear that he had taken undue interest in respect of the evidence and took upon himself the task of proving the charges.

14. It is then submitted that the Enquiry Officer should not have permitted the management to lead the evidence of Shri G. N. Ashai and Shri M. W. Dhannaskar as the said witnesses were totally irrelevant and were not at all present when the alleged incident has taken place in the Marine Lines Branch and were not working in the said branch of the Bank at the relevant time. The management thought it fit to examine them and it appears from the Enquiry Officer's report that though they were not present they were relevant and material witnesses. Whatever it is, grievance cannot be made for permitting examination of these witnesses produced by the Presenting Officer. Treating Mr. Kolwalkar hostile is mere grievance of. I do not think I need say anything more on this point at this stage. So far as the non examination of the witness is concerned also. I refrain from making any observation. I find that point for decision now before me is whether the enquiry was vitiated on the ground that it was not fair and not in accordance with the principles of natural justice. I find that there is no material on record on the basis of which it could be said that it was not fair and not in accordance with the principles of natural justice. It is not shown that the Enquiry Officer was biased and it is the management's case that the Senior Officer was appointed for the purpose of this enquiry. Shri Pednekar, General Secretary, who was a representative of the delinquent also had at no stage of enquiry taken any objection to the enquiry being unfair and in my opinion for very good reasons he did not do so.

15. A decision referred to and relied upon is in the case between Tripathi, K. K. and State Bank of India and others 1984 (I) LLJ p. 2. Evidence was not recorded in the presence of delinquent employee, material gathered in the absence of employee, gist of materials gathered communicated to the employee, absence of opportunity of cross-examination and the point was whether it vitiated the concept of fair play. It has been held that to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity to cross-examination, it has to be established that prejudice has been caused to the delinquent employee by the procedure followed.

16. In this particular case there is an opportunity of cross examination and there can be no grievance on that ground. In the case between Central Bank of India, Ltd. and Karumamoy Banerjee 1967 II LLJ, p. 739 is on distinct facts and, with respect, has no bearing.

17. Finding therefore, on the preliminary issue is that the enquiry was fair and proper and in accordance with the principles of natural justice. Matter be fixed for further hearing.

R. G. SINDHAKAR, Presiding Officer

Bombay, dated the 10th day of March, 1995

AWARD (PART-II)

18. The learned advocates appearing on behalf of the parties have been heard once again after the passing of Award Part-I. Mr. Dharap's submission on behalf of the workman is that the charge has not been established. I find that the management had produced necessary evidence before the Enquiry Officer and the Enquiry Officer at the end of this enquiry concluded that charges were proved. He has given reasons in support and while recording his findings he has also assigned reasons. He dealt with the arguments advanced on behalf of the delinquent employee. I do not find any difficulty in holding that the conclusions are such which could be reasonably reached by an Enquiry Officer. In other words they cannot be styled as perverse justifying interference.

19. The submission then made is that the role played by the delinquent employee is minor. I am unable to appreciate this argument. It is he, who had issued cheque and he, who has taken it away. That was done with a view to protect himself because he had no balance in his savings account. It would have justified disavowal of the cheque. To avoid this predicament he used his position in the Bank and accessibility to the cheque. It has in my opinion, been therefore, not a minor role but he is the principal culprit.

20. The submission then made is that the incidence is alleged to have taken place in the year 1980 and today in the year 1995, the matter is being examined. He has suffered enough and therefore, the penalty of discharge may not be retained. Reference is made to the provisions of section 11(A) of the Industrial Disputes Act which empowers this Court to interfere with the order of punishment. It is true that this Tribunal has jurisdiction under section 11(A) of the Act to set aside the order of punishment of discharge and substitute it by a lesser penalty. However, it has to be borne in mind that the punishment to be imposed upon the delinquent employee has to be proportionate to the gravity of the charge. The charge is, in my opinion, a serious one and grave enough to justify the penalty of discharge. The fact that long time has elapsed since the misconduct was committed would not in my opinion, be a good ground in this particular case to dilute the penalty imposed, and replace it by a lesser one. It was also submitted that there was no bad past record, no financial loss to the Bank and therefore, also the penalty reserved to be reduced. I am not impressed by this argument. I would, therefore, hold that the action of the management in discharging from services Shri Padiyar is justified and that he is not entitled to any relief.

Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 23 मार्च, 1995

का. आ. 976—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण, में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबन्धतंत्र के संबद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22 मार्च, 1995 को प्राप्त हुआ था।

[संख्या एल 17011/46/89-आई आर (बी-2)]

बी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 23rd March, 1995

S.O. 976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of L.I.C. of India and their workmen, which was received by the Central Government on 22-3-1995.

[No. L-17011/46/89-IR (B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer.

Reference No. CGIT-59 of 1989

PARTIES :

Employers in relation to the management of Life Insurance Corporation of India, Bombay

AND

Their Workmen.

APPEARANCES :

For the Management—Shri Bapat, Officer.

For the Workmen—Shri A. S. Deo.

INDUSTRY : Insurance

STATE : Maharashtra

Bombay, the 22nd February, 1995

AWARD

Government of India, Ministry of Labour has by letter dated 15-12-1989 referred dispute mentioned in the Schedule for adjudication under Section 10(1)(d) read with sub-section 2-A of the Industrial Disputes Act, 1947.

"Whether the action of the management of LIC of India in retiring Shri S. H. Pujari, Record Clerk from the services of the Corporation w.e.f. 30-6-1989 on the basis of date of birth mentioned in the horoscope and thus ignoring the date of birth mentioned in the School Leaving Certificate is legal and justified? If not, to what relief the workmen concerned is entitled to?"

2. Statement of claim has been filed on behalf of the Association which has sponsored the dispute. It has been stated that the present workman Shri Pujari has been asked to retire on reaching the age of superannuation, which is 60 in this case, by the management on the basis of this date of birth recorded namely 23-6-1929. It is the grievance of the Association that his date of birth as recorded in School Leaving Certificate is 1-1-1930 and on the basis of this date he should have retired.

3. Shri Pujari was absorbed on the Establishment of the Corporation as he was an employee of the erstwhile insurer Industrial and Prudential Life Assurance Company. On the basis of Horoscope submitted by him, his date of birth was recorded 23-6-1929. In the year 1970 the Chairman, LIC had issued instructions known as verification of Age instructions 1970 and pursuant to that on or about 30-1-1971, the Zonal Manager of Life Insurance Corporation of India, western Zonal Office wrote to the workman that he had decided to enter in his Staff Record Sheet his date of birth as 23-6-1929 on the strength of his Horoscope. The Competent Authority had, it is stated in the statement of claim that it had two documents namely, School Leaving Certificate and the Horoscope. However, from the letter the management did not give any reason for entering into Staff Record Sheet his date of birth as 23-6-1929 on the strength of the Horoscope and for returning the School Leaving Certificate showing his date birth as 1-1-1930.

4. On 11-4-1989 the Association wrote to the management pointing out the discrepancies and illegalities in recording the date of birth as 23-6-1929 on the basis of Horoscope instead of the School Leaving Certificate as Horoscope was not genuine and not prepared at the time of birth. Since dispute raised before the Asst. Labour Commissioner was not resolved reference has come to be made to this Tribunal for adjudication.

5. Contention of the Association is that the School Leaving Certificate ought to have been accepted as the basis being more authentic and in preference to Horoscope which had the last priority among various documents listed in the circular.

6. The management has filed written statement denying the allegations and the claim made by the Association. It has stated that the Chairman of the Corporation had framed rules in 1970 for verification of date of birth of the employees of the Corporation and Competent Authority had to verify the date of birth of all the employees of the Corporation—both transferred employees, that is, employees whose services were transferred to the Corporation upon the establishment of the Corporation, as well as employees recruited by the Corporation on or after 1-9-1956. Shri Pujari, the present workman was recruited by the erstwhile insurer "Industrial and Prudential Life Assurance Company" on 16-7-1951 as a Peon. In the service record of the said Company, his date of birth was recorded 23-6-1929. After nationalisation, data in respect of service particulars of all the employees was collected in the prescribed form called Form for Statistics of Administrative Staff. In this Form the date of birth of the workman was entered as 23-6-1929. In proof of his date of birth the workman had submitted original Horoscope which carried 23-6-1929 as the date of birth both according to English Calendar and Jeshta Mase Krishna Paksha, Shaka 1857, its corresponding equivalent according to Indian Calendar. The workman had also submitted original Horoscope showing the same date of birth to the insurance company in proof of his age and the same was accepted on 22-6-1955.

7. After the aforesaid Age Instructions were framed, all the employees including the workman were asked to submit the documents listed in the Schedule to the said Age Instructions for verification of their date of birth and for entering the correct date of birth in their service record. In March 1971, he was asked to produce the documents such as School Leaving Certificate, Horoscope, etc for verification of his date of birth. The workman produced School Leaving Certificate on 27-8-1971 dated 24-3-1970. This showed his date of birth as 1st January 1930. The workman had earlier, vide his letter dated 1-8-1970 stated that his age was admitted for his insurance policy on the basis of the School Leaving Certificate which Certificate he was trying to obtain from the School he last attended. He did not produce any other document listed or otherwise in proof of his age. He later on produced the School Leaving Certificate. Since date of birth shown in the School Leaving Certificate did not tally with that shown in the service record based on original Horoscope, the workman was asked to explain the discrepancy and the explanation given by the workman in his letter dated 13-10-1971 revealed that he had no objection to admit his age on the basis of any of the two documents that is, Horoscope or School Leaving Certificate for the purposes of admitting his age in his

service record. The Competent Authority did not consider it necessary to alter the date of birth recorded on the basis of the original Horoscope produced by the workman and accordingly informed the workman by letter dated 30-10-1971.

8. Right from that time he never made any grievance. Even in October 1982 he had applied for a certificate showing his service particulars for obtaining domicile certificate and in reply a certificate dated 12-10-1982 was furnished to him wherein also his date of birth was shown as 23-6-1929. He did not question this and the Association for the first time raised the present controversy by letter dated 11-4-1989 addressed to the Zonal Manager of the Corporation by the Association.

9. Contention of the management is that action has been taken in accordance with the instruction issued and there is no justification for raising the present dispute at such a late stage and shortly before his date of retirement. When, in fact, he has himself left it to the management to act upon either of the two documents and had himself at the time of his entry produced Horoscope on the basis of which his birth date was recorded.

10. Rejoinder has been filed to this. On behalf of the management Shri P. V. Bhaskaran, Asst. Secretary in the western Zonal Office of the Corporation has filed an affidavit and he has been cross-examined on behalf of the Association by Mr. Deo. There is no oral evidence on the side of the Association.

11. The undisputed position is that the employee Shri Pujari was recruited originally by Industrial and Prudential Life Assurance Company on 16-7-1951 as a Peon. His date of birth was then recorded as 23-6-1929 that was on the basis of Horoscope submitted by him. It was accepted as early as on 22-6-1955 as the Company recruited him and where he was then working. After nationalisation the Corporation issued Age Instructions for verification of the date of birth of the employees and for entering the correct date of birth in the service record. The employee was asked in March 1971 to produce documents such as School Leaving Certificate, Horoscope, etc. for verification. It is then that he produced School Leaving Certificate and which shows the date of birth was 1-1-1930. There was a discrepancy in the School Leaving Certificate and the Horoscope, so far as the date of birth is concerned and therefore, he was asked to explain that discrepancy. In reply, he stated :

"Permit me to state at the outset that I was under the misapprehension that my age under Policy No. 146964 of the Unit Industrial Prudential was admitted on the basis of my School Leaving Certificate. It was only later on, after I had written the letter, that I realised after the reference to my records, that my age was admitted on the basis of my original Horoscope. In view of what I have stated above, I shall thank you to admit my age on the basis of any of the two documents—Horoscope or School Leaving Certificate for the purpose of admitting my age in my service records."

Thereafter the Competent Authority passed an order in accordance with the provisions of the said Age Instructions and informed Shri Pujari accordingly.

12. Recruitment rules will not govern the present case and therefore, any decisions rendered on the interpretation of the recruitment rules will not be of any assistance to the Association.

13. Even in the year 1982 when he asked for certificates showing service particulars and was given one mentioning his date of birth as 23-6-1929, he did not raise any dispute. It is only on 11-4-1989 that the Association thinks it fit to write to the Zonal Manager, making the grievance about not accepting the School Leaving Certificate as the basis for entering the correct date of birth. Be it noted that on the basis of his date of birth recorded, he was due to retire on 23-6-1989 that is only 2 months and 12 days before his superannuation. This attempt to raise a dispute on the eve of retirement has not been appreciated by the Supreme Court in its decision in the case between Secretary and Commis-

sioner, Home Department and Ors. and R. Kirupakaran, reported in 1994 1 LLJ Page 673. It has made reference to the relevant statutory rules framed as well as the Administrative Instructions issued. However, this is not the main reason why the Association's case is not being considered. If there is any merit in the grievance made, I would have certainly entertained the same so that, in case similar dispute arises it may not have to be referred for adjudication.

14. Here the management has stated that the erstwhile employee of an Insurance Company was absorbed after nationalisation and the original service record had his date of birth entered and that was on the basis of Horoscope produced by him. It was accepted as early as in the year 1955. Thereafter, under the Instructions issued in 1970 he was called upon to produce documents and he did produce certificate at Entry No. 5. In the first Schedule to the Instructions is mentioned a certificate issued by School or other educational institutions recognised by the appropriate Government Authority in which the employee studied last. It also mentioned, original Horoscope prepared soon after the birth of the employee at Entry No. 9. Here in this case there was an entry made already on the basis of the Horoscope and later a certificate from the School he studied last was produced. The Competent Authority gave him a notice to explain discrepancy in that and I also quoted the relevant portion of the reply permitting the management of admitting his age on the basis of any of the two documents namely, Horoscope or School Leaving Certificate. The Competent Authority thereafter acted upon original Horoscope produced by him and did not think it necessary to alter the entry already made. That the Competent Authority could do under 6(3) of the Instructions which read thus :

"The Competent Authority shall examine the document produced by the employee or procured in regard to him, and after considering the relevant records and circumstances of the case, pass orders that the employee's date of birth be entered in the staff record on the basis of such document as may be acceptable to it."

Before doing that it complied with provisions of 6(2) by calling for explanation. Thus, it is a case, where the Competent Authority had dealt with the case of the employee in accordance with the Age Instructions. I may also point out that under Clause 5(3), it is for the employee to inform the verifying authority of the discrepancy and produce all such documents as may be available and state which he believes shows his true date of birth and the reasons for such belief. Here, as I have already stated above, he did not state which was true according to his belief much less the reason for such belief and in fact, left it to the authority to act upon either of them. He has also stated in his reply dated 13-10-1971 that he was under the misapprehension that his age under Policy of the Unit Industrial Prudential was admitted on the basis of his School Leaving Certificate. It was later on, after he has written the letter, that he realised after reference to his records, that his age was admitted on the basis of his original Horoscope. With all this it is difficult to appreciate the grievance now made by the Association on behalf of the workman.

15. I may mention here that as against the order passed by the Competent Authority the employee has a right to appeal to the Appellate Authority and that appeal has to be preferred within a period of 6 months from the date on which the Appellant receives order or copy of the order. Nothing has been done by the employee as against the order passed by the Competent Authority within that period till he retired and it is only the Association that raised the dispute in April 1989. I find that there is no justification whatsoever for the Association to raise the dispute.

16. On behalf of the Association, Mr. Deo has relied upon some instances and an award passed in the case of Mr. R. G. Patkar. Peon. In his case similar reference appears to have been made where he was made to retire with effect from 18th October, 1980. It also appears from the copy of the judgement of the Learned Presiding Officer, in Reference No. CGIT-2/47 of 1980 that Shri Patkar had joined as a Boy Peon in Oriental Government Security

The Assurance Company in 1958 and came to be confirmed in that post and later he became a Peon. He was working in that capacity on the eve of nationalisation of Life Insurance business in January 1956. He was promoted later to the post of Head Peon. The date of offer of the workman as entered in the service record of the Company was 18-10-1920. In 1975 he was asked to submit School Leaving Certificate for verification of his date of entry in the service record. He expressed inability to do so and asked the management to write to the School Authorities to get the School Leaving Certificate. After a correspondence with the School Authorities the management got the School Leaving Certificate showing the date of birth as 15-7-1923. The workman requested the management to accept this date of birth in preference to the one given earlier when he joined the Private Company. That was not accepted by the management and dispute raised was referred for adjudication. The Learned Presiding Officer has dealt with the points raised, arguments advanced and ultimately held that the action of the management was unjustified. Facts of that case are distinct. In that case the Horoscope was procured by the insurance agent for the purpose of admitting his age in the insurance policy. Here, in this case, it is Shri Pujari who produced the Horoscope and relied upon it when he entered service. He did not adduce any evidence to show that it was not genuine and or original. When he produced the School Leaving Certificate he left it to the Authorities when called upon to explain the discrepancy to act on one of the two and after the Authorities acted upon the Horoscope did not complain about it by the way of appeal and even thereafter and it is only the Association which took up the cause 24 months before his retirement. I may mention that it has been submitted in the written arguments that the letter dated 13-10-1971 is not on record. However, in the course of the rejoinder it is not disputed that such a letter was written. On the contrary, it has been stated in rejoinder that 'on the contrary he left it to the judicious mind of the Authority to weigh both the documents and decide which one is more authentic'. In these circumstances, I find it difficult to accept the Association's contention.

17. I find that at the time of verification the Age Instructions of 1970 have been scrupulously followed. I may make a reference to the relevant clauses above and I find that clause 5(5) is clearly attracted because it is not a case where there was nothing on the file of the Corporation to show any other date of birth. The Competent Authority considered this and as permitted entered in the Staff Record date of birth on the basis of Horoscope which was acceptable to it.

18. Decisions in the case of Shamsber Singh Vs. State and others reported in 1994 Labour Industrial Cases 1927 is, with respect, on different facts. There reliance was placed on Horoscope when the date of birth entered was on the basis of School Leaving Certificate. It is held therein that Horoscope has no intrinsic value since it is issued by authority having no legal sanction behind it. Here in this case before me instructions of 1970 specifically mentioned Horoscope as one of the listed documents. In that decision, however, the High Court found that the employee failed to claim correction even after remaining in service for 32 years and that on the ground that he failed to give any positive or irrefutable proof as to his correct date of birth, the claim was not maintainable.

19. Entries in the first schedule show that original Horoscope prepared soon after the birth of the employee is one of the listed documents. Merely because it is placed Item No. 9 and a certificate issued by the School Authorities is listed Item No. 5, it does not mean that Item No. 5 takes precedence over Item No. 9.

20. It is thus found that the Industrial and Prudential Life Assurance Company had appointed Shri Pujari as a Peon as early as in the Year 1951 and at the time received from the workman Horoscope showing his date of birth as 23-6-1929 which was accepted in proof of his age on 22-6-1955. Thereafter, as per Instructions issued in 1970 verification was carried out and it is not correct to say that it was done because the management did not find the Horoscope genuine. That exercise was carried out because

the instructions stated that it was necessary to do so if verification was not done after 1956, Shri Pujari produce the School Leaving Certificate and since there was discrepancy he was called upon to explain and it be stated that he instead of justifying the correctness of his date of birth on the basis of School Leaving Certificate left it to the management to admit his age on the basis of any of the documents. The management considered the fact that he had joined the School in 1958 and could not have produced the School Leaving Certificate for the purpose of the insurance policy on 22-6-1955 and the Competent Authority considered it not necessary to alter the record about date of birth on the basis of original Horoscope and it informed him accordingly. In my view, this action cannot be said to be unjustified much less illegal. Shri Pujari is therefore, not able to get any relief and award is accordingly passed.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 23 मार्च, 1995

का. आ. 979—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधन के संबंध नियोक्तों और उनके कर्मचारों के बीच अन्वय में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 1 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-95 को प्राप्त हुआ था।

[संख्या एल-12011/57/90-आई आर (बी. 2)]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 23rd March, 1995

S.O. 979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 1, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 22-3-95.

[No. 1-12011/57/90-IR(B.I)]
V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R.G. Sindhkar,
Presiding Officer.

Reference No CGIT-16 of 1991

PARTIES :

Employers in relation to the management of Union Bank of India.

AND

Their Workmen

APPEARANCES :

For the Management : Shri Patankar, Advocate.

For the workmen : Shri Nabar, Advocate.

INDUSTRY : Banking STATE : Maharashtra
Bombay dt. 28th February, 1995

AWARD

Government of India, Ministry of Labour has by letter dt. 12th February, 1991 referred dispute mentioned in the schedule below for adjudication under section 10(1)(d) of the Industrial Disputes Act, 1947.

SCHEDULE

"Whether the action of the management of Union Bank of India in relation to its Pune Zone in not absorbing

the following 5 drivers utilised on the cars of the Bank as per details below is justified ? If not to what relief the workmen are entitled ?"

Name of the employee	Date of regular service
i. Mr. Sayyed Khawar	20-3-1987
ii. Mr. Manik Niward	March 88
iii. Mr. Salim Mirza	25-11-87
iv. Mr. Mawal Francis Fernandes	1-1-87
v. Mr. Sarjerao G. Khuttle	June 84

2. Statement of claim has been filed by the Union Bank of India Employers Union under signature of Mr. Bhadha General Secretary of the Union. The contention is that these five employees employed to drive the vehicles of the Office of the Bank are in fact employee of the Bank and entitled to be absorbed and treated as such and given all the benefits which employees of the Bank are entitled to under the settlement and Award. It is the case of the Union that they have worked for a fairly long period and the management declined to accept these demands on the plea that there is master servant relationship between these employees and the Bank. It is because of this that the dispute has come to be referred to this Tribunal for adjudication.

3. The management of the Bank denied that they are the employees of the Bank or entitled to be absorbed as such. Their contention is that they are the personal employees of the Executive of the Bank employed by them. The claim of the Union has been challenged on this ground.

4. The short point that arises for consideration therefore is whether these five persons mentioned in the schedule are the employees of the Bank or entitled to be absorbed and treated as if they were employees of the Bank.

5. I have heard the arguments advanced by the Learned advocates appearing on either side.

6. Mr. Nabar appearing on behalf of the Union submitted that the cars are owned by the Bank and used for the Bank's official work, that they are maintained by the Bank for the personal use of the officers within the permissible limit officer has to pay at a rate fixed by the Bank. It is his submission that therefore they are the employees of the Bank and this arrangement made by the Bank is only to deny benefits which they are otherwise entitled to as employees of the Bank. It is also submitted that they have been in service for fairly long period in spite of the change in the Officer and that was indicative of the fact that they were not be personal servants of the Officer, but employees of the Bank. It is submitted that the salary paid to the employees is reimbursed. And it is not in fact a car allowance.

7. On behalf of the Management Mr. Patankar submitted that there was no evidence to show that they were employees of the Bank. The Bank had no control over the drivers and in view of the settled position in law they could not be termed as Bank employees. The fact that they have been working as drivers for a period ranging between 3 years and 7 years is not disputed. However they have not been admittedly appointed by the Bank. The relevant documents on record include the extract of chapter that is Union Bank of India (Officers) service regulations of 1979. It shows that certain categories of Officers are entitled to the use of the Bank car not only for official purpose but also for personal purposes. This use for personal purposes is subject to the rules formulated by the Bank in accordance with the guidelines of the Government from time to time. It is seen from the relevant Annexure that an officer who is eligible to use the banks cars for personal purposes will be required to pay a sum of Rs. 100/- for such use. It is further stipulated that an officer allotted the banks card is allowed to use it for personal purposes shall use it upto a maximum of 500 kilometers per month and for use beyond 500 kilometers per month the officer shall be required to pay on monthly basis the cost of petrol calculated at the eight kilometer run per one litre of petrol besides Rs. 100/-. It then provides that the facility of banks driver wherever considered necessary shall be confined to all officers in top executive grade. If banks driver is not provided to them they will be free to engage personal driver and claim reimbursement of salary on production of receipt upto the limit prescribed in this record. All other officers allotted with the banks cars shall be entitled

to get reimbursement of salary paid to personal driver on production of receipt for salary paid. The maximum amount is restricted to limits laid down by the managing director not exceeding Rs. 450 per month. The officers are expected to maintain a log book for that purpose and on being asked to do that the management produced extracts of log books for the period for which they were asked for. The management's contention therefore is that in the circumstances it is the officers who are not provided with banks drivers have engaged these persons as personal drivers and are being reimbursed under the rules. The Management has also produced on record in support the receipts showing reimbursement. In the circumstances the management says that bank has on its pay roll drivers employed by the bank and whenever such drivers are not provided the officers who are entitled to services can engage personal drivers and these persons have been appointed as personal drivers by the officers. That is permissible under the rules and not contrary to any statute. It is also not a device to circumvent any statute. The rule provided for it.

8. The management has relied upon a decision in this behalf in the case of the employers in relation to Punjab National Bank Appellant Vs. Gulam Sastagi respondent reported in 1978 Labour and Industrial Cases 519. In that case area Manager of Bank was given personal allowance by Bank to enable him to employ personal driver of his own. The vehicle was driven by him. Its petrol and oil requirement and maintenance all fell within the financial responsibilities of the bank. There was absence of material to make out that the driver was employed by the bank and was under its direction and control, was paid his salary by the bank and otherwise was included in the arm of employees on the establishment of the Bank. There was no evidence to show circumvention of any statute. In the circumstances the Supreme Court held that the conclusion that the driver was employed by the bank drawn by the Central Government Industrial Tribunal Calcutta while passing award was erroneous and reversed it. Yet another decision in the case between Standard Chartered Bank and Assistant Labour Commissioner (Central) and others reported in 1994 II LLJ Page 792, dealt with a similar situation. An employee of the petitioner had employed a driver and he dismissed the driver who sought to initiate conciliation proceedings and the first respondent by his order dt. 3rd of April 1990 decided to initiate conciliation proceedings. The petitioner bank challenged that order and the Calcutta High Court held that at no material point of time the petitioner bank had appointed the driver and there cannot be any conciliation proceedings. In that case also there was neither any letter of appointment nor termination order by the bank and it appears from the record that the workman had obtained the employment from the employee of the bank in his personal capacity.

9. In this case before me also I find that the bank has not appointed these persons as drivers much less on its establishment, they were not under the control of the bank and were employed by the officers of the bank and those officers were given car drivers allowance and washing allowance of banks cars. They were reimbursed payment of drivers salaries upto the limit prescribed.

10. It is submitted on behalf of the Union that the Log book for the month of May/June 1995 showed name of the user as Mr. Madiman and Mr. Sule. Submission of Mr. Nabar is that the driver attached to his vehicle could not have been an employee of two persons and that showed he was a driver employed by the Bank. I am unable to accept this submission. subsequent log book entries are in respect of an individual user. There are entries in the name of Mr. Madiman as well as Mr. Sule separately. As against the name of the user the designation column is there. It is mentioned Regional Manager. It appears that both Madiman as well as Sule were Regional Managers. It could be that for a part of the month this car was allotted to Mr. Madiman and for the rest of the month it was allotted to Mr. Sule. Drivers' names are not stated. From this circumstances alone I do not think it could be inferred that the same driver was in the employment of two officers simultaneously.

11. Submission of Mr. Nabar was that inspite of the change of the officers these drivers continued to work as drivers on the vehicles and that would be indicative of the fact that they were bank employees. I am unable to accept this submission either. It could as well be that at the time of vacancy of the officer either on transfer or on retirement the Officers may be recommending his personal driver to his successor in office and

that is what usually happens. The successor could employ him as his personal driver on the recommendation of his predecessor and this might continue. Merely because they have continued to work as drivers for a long time and may be with different Officers will again not go to show that they are the employees of the Bank in the absence any other material. In the circumstances I am unable to grant any relief to the drivers whose cause is espoused by the Union and Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 23 मार्च, 1995

का० आ. 978.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1 वम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-3-95 को प्राप्त हुआ था।

[संख्या एल-12012/420/91 आई आर बी-2]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 23rd March, 1995

S.O. 978.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 22-3-95.

[No. L-12012/420/91-IR(B.II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1. BOMBAY

PRESENT :

Shri Justice R. G. Sindhakar, Presiding Officer.
Reference No. CGIT-32 of 1992

PARTIES :

Employers in relation to the management of UCO Bank.
AND

Their Workmen.

APPEARANCES :

For the Management : No appearance

For the Workmen : Shri Joshi, Union representative.

INDUSTRY : Banking.

State : Maharashtra.

Bombay, dated the 28th day of February, 1995

AWARD

Government of India, Ministry of Labour has referred dispute mentioned in the schedule below for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 :

"Whether the action of the UCO Bank for non-absorption of Shri K. R. Thorat and Shri Sawant in permanent cadres of AMO, who are officiating the job since 8 years is justified? If not, what relief the concerned workmen are entitled to?"

2. The General Secretary of the UCO Bank Staff Union Mumbai has filed statement of claim. It is stated that on 13-4-1983 the Bank invited application from candidates for preparation of panel of Accounting Machine Operators. This was circulated in the branches. Mr. M. R. Thorat and Mr. A. K. Sawant applied for the posts of Accounting Machine Operators alongwith many others. Their applications were forwarded to Divisional Office alongwith letter dated 28-4-1983.

They were withdrawn from their posts of Typists and were instructed to officiate as Accounting Machine Operators. They were officiating as such in posts for nearly 7-8 years till June, 1991. There were vacancies of Accounting Machine Operators in the region, but management did not absorb them on those posts. Excepting these two, that is, M/s. Thorat and Sawant all other candidates were posted as permanent Accounting Machine Operators. On the contrary, management discontinued their officiating allowance from June 1991 and offered the same to others. On 13-4-1988, a new Promotion Policy Agreement came into existence whereby a procedure of filling up the post of functional allowance was modified. M/s. Thorat and Sawant applied for the post of Accounting Machine Operators under old policy and practice. At the time of terminating old policy management decided to fill up all vacant posts as on 31-8-1986 by old procedure. It was decided that any promotional process initiated before 31-8-1986 should be completed as per old policy and practice. Accordingly all posts upto 31-8-1986 were cleared by the management, M/s. Thorat and Sawant were empanelled as per old policy but not taken care of by the management. Management has discontinued their officiating by the letter dated 14-6-1991 and management was contemplating to fill up the vacant posts of Accounting Machine Operators by issuing fresh notification. Since the management did not agree to absorb M/s. Thorat and Sawant, dispute has been raised and referred for adjudication and by this statement they pray for M/s. Thorat and Sawant be directed to be absorbed.

3. The management has filed written statement under the signature of Chief Officer (Personnel). It is admitted that applications were invited for preparation of panel/seniority list for selection of the Accounting Machine Operator as per P.P.S. dated 1-8-1981. Gist of other relevant clauses is given. In response to the notification 13 applications were received and amongst them Mr. C. V. Joshi was seniormost. He was selected for permanent posting at Churchgate and 4 typists were selected as Relieving Machine Operators on 7-4-1984. They were Mr. Tirlokar, Mr. Gaikwad, Mr. Rele and Mr. Gadre. Mr. Kelkar and Mr. Katkar at Sl. Nos. 5 and 6 had cancelled their applications. Rest of 6 persons were M/s. Amin, Rajgopal, Thorat, Sawant, Sakhalkar and Sanawane. Since M/s. Thorat and Sawant were Sl. No. 9 and No. 10 are junior to two workmen at Sl. No. 7 and Sl. No. 8 their claim for permanent post of A.M.O. (Accounting Machine Operator) could have been tenable only after absorption of those who were senior to them. Mr. Amin has not been absorbed and therefore, M/s. Thorat and Sawant could not stake their claim for absorption only on the ground that they were officiating for long period. Out of 4 supernumerary, that is Relieving Machine Operators who were permanently absorbed on 10-9-1984 against permanent vacancies at D. N. Road branch in place of M/s. B. A. Rane and S. A. Ghag transferred to other branches. One machine of Malad branch was shifted to Ghatkopar branch and Mr. S. T. Thavare was transferred to Ghatkopar branch as A.M.O. Because of this transfer, temporary officiating was assigned to Mr. Thorat from 30-1-1985 being seniormost having technical knowledge of machine operation. That was, however discontinued as per clause 6.4 of P.P.S. and officiating was allowed to eligible employees of deposit department and it was still continuing.

4. It has been also mentioned that as per R.B.I.'s Pilot Project for mechanisation in the Banking Industry advanced Electronic Ledger Posting Machines were being installed. Hence the post of A.M.O. were not filled up by supernumerary A.M.O. but officiating was continued so as to reassess the position of A.M.Os. and if mechanisation was to take place the post of A.M.O. would have been required to be shifted to some other branches. Some of the A.M.Os, redeployed to suburban branches as A.M.O. from Churchgate, Madam Cama Road and Nariman Point branches in terms of ALPMO introduction at the said branches. The position is being reviewed at the said branch officiating of the said vacancies will continue till further redeployment of said post of A.M.O. takes place.

5. It is therefore, submitted that the fact that M/s. Thorat and Sawant though officiated for long against the vacancies available does not improve their claims for absorption as
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there never existed any provision for keeping a panel alive for future absorption. The panel did not survive under the selection was over and became irrelevant. Temporary officiating was allowed only on the seniority basis and M/s. Thorat and Sawant were incidentally seniormost and therefore, had the opportunity to officiate by virtue of seniority. There was no provision for forming of a panel as per the P.P.S. of 1981, for future absorption. They will be eligible as per new Promotion Policy Settlement dated 13-4-1988. Facts are not much in dispute.

6. In the year 1983 the Manager informed Divisional Office on 28th April, 1983 that 4 typists were eligible for the empanelment for the post of Accounting Machine Operators and amongst them were conveyed pursuant to circular dated 13-4-1983. By this circular typists having minimum continuous service of one year as typists in the Bank could submit their applications for preparation of panel for Accounting Machine Operators. They were expected to be trained. It also is evident that by letter dated 14th June, 1991 they were informed that their services were not found necessary and therefore, discontinued as A.M.O. The management has admitted in the written statement that seniority list was prepared pursuant to the notification and on the receipt of all applications, Mr. Joshi who was the seniormost was selected for permanent post of A.M.O. at Churchgate and 4 typists, M/s. Tirlokar, Gaikwad, Rele and Gadre were selected for supernumerary posts as Relieving Machine Operators on 7-4-1984. M/s. Kelkar and Katkar who were at Sl. No. 5 and No. 6 in that seniority list cancelled their applications. 6 persons who were not selected as A.M.O. have been mentioned there and it is stated that they were amongst list of applicants. Amongst this list of 6 persons are M/s. Thorat and Sawant. Management, therefore, contends that the turn of M/s. Thorat and Sawant for absorption never came because there were above them two persons in that list of 6 persons and also 4 typists who were selected for supernumerary posts as Relieving Machine Operators. It is the management's contention that by virtue of their seniority they have officiated in vacancies but on that basis they cannot claim permanent absorption. The reason is that the rule of seniority guides appointments as contemplated by preparation and maintenance of seniority list as per P.P.S. dated 1-8-1981. This contention seems to be sound. It has been stated in the written statement that due to transfer of Thavare Mr. Thorat being seniormost having technical knowledge of machine operation officiated in that vacancy. It is also stated that because of this rule of seniority prevailing it was not possible to reach M/s. Thorat and Sawant. Even Mr. Amin who was at the top of the list, over these persons could not be accommodated.

7. The claim of these two typists for absorption in permanent vacancies appears to be based on the theory that they officiated for long time. Officiating for any length of time will not justify their claim for absorption when they have seniors above them and who are eligible for appointment. I may mention here that Mr. Amin had joined on 1-10-1957 while M/s. Thorat and Sawant joined on 1-2-1981 that is after about 24 years and yet Mr. Amin was awaiting his appointment to the post of A.M.O.

8. It is true that the Asstt. Chief Manager wrote to the Head Office, Personnel Department on January 3, 1991 recommending the case of M/s. Thorat and Sawant for appointment and mentioned therein the vacancies against which they could be appointed. However, that proposal was not accepted and reply dated 16-5-1991 is filed on record. It clearly mentions that question of preparing panel for future vacancies in officiating allowance bearing posts was never envisaged in promotional policy of 1981. It has been already noticed that M/s. Thorat and Sawant figured in the list of 6 persons who were not selected as A.M.Os. but were only amongst the applicants. Therefore, looked at from that point also they cannot stake their claim to the permanent post on the basis that they have worked for long as A.M.Os. I therefore, find that the action of the management in not absorbing M/s. Thorat and Sawant in permanent cadres of A.M.Os. is not unjustified and workmen are not entitled to any relief. Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 23 मार्च, 1995

का. अ. 979.—आयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मारमुगाओ पोर्ट ट्रस्ट गोवा के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण न. 1 बम्बई के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-04-95 को प्राप्त हुआ था।

[संख्या एन-36012 / 1 / 87 / डि IV (ए)]

वी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 23rd March, 1995

S.O. 979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal, No. 1, Bombay, as shown in the industrial dispute between the employers in relation to the management of Mormugao Port Trust, Goa and their workmen, which was received by the Central Government on 22-04-95.

[No. L-36012/1 87-D.IV (A)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT :

Shri Justice R.G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT-45 OF 1987

PARTIES :

Employers in relation to the management of Mormugao Port Trust, Goa.

AND

Their Workmen

APPEARANCES :

For the Management : Shri Presswalla, Advocate.

For the workmen : Shri Peter, Union representative.

INDUSTRY : Port and Docks

STATE : Goa

Bombay, dated the 8th day of March, 1995

AWARD

Government of India, Ministry of Labour has referred dispute mentioned in the schedule below for adjudication under section 10(1)(d) read with 2A of the Industrial Disputes Act, 1947.

"Whether the action of the management of Mormugao Port Trust in changing the designation of Shri Ramachari from Body Repair Fitter amounts to a change of conditions of service and whether the demands of the four Assistant Diesel Fitters, through Mormugao Port & Railway Workers' Union that the post of Diesel Fitter should be filled in by promotion from the category of Assistant Diesel Fitter, are justified ?

If not, to what relief the workmen are entitled to, and what directions are necessary in this respect ?"

2. Statement of claim has been filed on behalf of the workman by Mr. L. Rodrigues, General Secretary, Mormugao Port & Railway workers Union.

3. It has been stated that Shri Ramachari was appointed on E.L.R. basis as a Body Repair Fitter on 1-2-1984 by creating a supernumerary post. He was working with other E.L.R. Body Repair Fitters, and the posts of E.L.R. Body Repair Fitters have been regularised along with those other E.L.R. Staff. Shri Ramachari had joined the services on

1-2-1984 and in the seniority list of Fitters he was at Sr. No. 3. Shri Gummath V. Toraskar who joined as Body Repair Fitter on 1-2-1973 was a Sr. No. 1.

4. The post of Direct Fitters and Assistant Diesel Fitter are apparate from the posts of Fitter (Vehicle Body Repairs) and Asstt. Body Fitters (Vehicle Body Repairs). Though the scale of pay of Diesel Fitter III an Fitter (Vehicle Body Repairer) III is the same the post of Diesel Fitter was the selection post while the Fitter (V.B.R.) was non-selection post. The qualifications required for the two posts were different. Appointments to the posts of Fitters is made directly by way of direct recruitment workers appointment to the post of Diesel Fitters are made by way of promotion from the posts of Asstt. Diesel Fitters.

5. Shri Ramachari was appointed as E.L.R. Body Fitter, continued to work in the said post upto May 1983. The union states that thereafter, he was being allotted the work of Diesel Fitter AKEN-M-M/s. for reasons not known to the union. The union objected and yet no action was taken by the authorities. Union says that this was an action taken with a malafide intention to accommodate Shri Ramachari in the capacity as a Diesel Fitter. Which was not permissible. This, according to the union was a change of classification by grades and necessitated notice under section 9(A). That notice was not given and therefore, the action is ab-initio, void, illegal and bad in law.

6. The union has stated that this was also in violation of the recruitment rules because Shri Ramachari does not fulfill the educational qualifications. He could not have been appointed directly and that has affected the promotion chances of other employees belonging to the category of Asstt. Diesel Fitters.

7. The management did not take any action therefore, the master is referred to this Tribunal for adjudication.

8. On behalf of the management, written statement has been filed. It is denied that there has been any change in the service conditions necessitating notice under section 9(A) of the Industrial Disputes Act. It is also denied that the action is malafide and ab-initio, void or illegal. Certain facts are not disputed.

9. It is the case of the management that right from the time when the West of India Portuguese Guaranteed Railway Company Limited known as WIP was Functioning in Goa before the liberation of Goa, as the Predecessor of the MPT, a system recruiting employees on a large scale on casual basis, known as the E.L.R., that is, Extra Labour Requisition has been prevailing. It continued in the MPT and as a result nearly 462 personnel were working as E.L.R. in the year 1982-83. The union representing the present dispute as well as two other unions functioning in the Port were protesting against the continuance of the system and raised demands and disputes regarding the regulation of the employees working as E.L.R. They were settled in conciliation and settlements were arrived at on 30th June, 1983. It is thereafter stated most of the employees working as E.L.R. were absorbed as Class IV employees. About 32 employees engaged on skilled/semi-skilled jobs which otherwise would fall in Class III category. Some of these had accepted regularisation as Class IV. In December 1983, it was decided that in order to regularise the appointment of 32 E.L.R. employees engaged on skilled/semi-skilled jobs, it was necessary to create that many posts in the appropriate categories. It was decided that E.L.R. employees working on their respective skilled/semi-skilled jobs while would be considered for selection and appointment to the respective posts after the creation of the said posts and also decided that the posts would be filled in as per the existing recruitment rules for similar posts but it was decided to depart from the existing method of recruitment namely, promotion. That was found necessary because, if the newly created posts were to be filled in by promotion the interest of the E.L.R. employees then working in the said categories would not be safeguarded. Therefore, additional posts were to be created as supernumerary posts which would be shown separately in the Establishment Schedule made under section 23 of the Major Port Trusts Act, 1963, and were not to be combined in the regular existing posts in the respective categories. These

supernumerary posts were abolished when the incumbent vacates the post due to promotion, resignation etc. As regards seniority, it was decided that they would be the juniormost in their respective grades. It was further decided that when any regular post in similar categories fall vacant the said incumbent of the supernumerary post would be adjusted against the said post progressively abolishing equal number of supernumerary posts. The contention of the management is that the unions did not object to this method of regularisation.

10. In order to implement this absorption of the E.L.R. employees working against skilled/semi-skilled categories supernumerary posts were created by the Chairman and a Staff Selection Committee meeting was held for filling up the posts in the Mechanical Engineering Department and the Marine Department and 5 persons were holding the regular posts of Diesel Fitter. E.L.R. employees Shri Antonio Rosario and Shri Antonio D'Costa were absorbed as Diesel Fitters against two supernumerary posts created for that purpose. They were to be considered as junior to the 5 persons holding the said posts. Two vacancies arose on 9th July 1985 and Shri Rosario and Shri D'Costa were appointed as Diesel Fitters in the regular post and supernumerary posts created for them were in turn abolished. They were appointed as Diesel Fitters against the vacancies in the regular posts and the said vacancies were not filled up by promotion of any of the then existing Asst. Diesel Fitters. Out of the existing Asst. Diesel Fitters on regular basis, the Asst. Diesel Fitter Shri Chandrakant Naik, the seniormost was promoted as a regular Diesel Fitter when the vacancy arose in the regular post of the Diesel Fitter after the appointment of Shri Rosario and Shri D'Costa as Regular Diesel Fitters, that is, on 21st July 1986 and Shri D'Mello was promoted on 13th May, 1987 as Shri Shetye had by then retired. According to the management this shows that right from the year 1984 this method of absorption of E.L.R. employees was adopted by the MPT with the consent and concurrence of the unions including the union that has sponsored the present dispute. At that time Shri Ramachari who was an E.L.R. right from 1975 though designated as Fitter (V.B.R.) on E.L.R. basis was doing work of a Diesel Fitter for at least three years prior to 1984 and while supernumerary post was being created for him to regularise him, an additional supernumerary post of Diesel Fitter could and ought to have been created. However, since the supernumerary post created for his absorption was that of Fitter (V.B.R.) and Staff Selection Committee meeting held on 13th January 1984 for filling up the various supernumerary posts created made the remarks :

"Shri Ramachari is presently working as Fitter (V.B.R.) as E.L.R. and has been carrying out repairs of vehicle, machines, engine, gear box, transmission, etc. for the last 3 years, the Committee recommended that he should be considered for appointment to the post of Diesel Fitter as and when vacancy arises."

Thus, it is stated by the management that when rightly so a supernumerary post of Diesel Fitter should have been created for absorption of Shri Ramachari, unfortunately the post of Fitter (V.B.R.) was created by the Chairman. To remedy this situation and in order to implement the suggestion of the Staff Selection Committee dated 13-1-1984, it was decided to create the supernumerary posts of Diesel Fitter and redesignate Shri Ramachari and as that would be the appropriate post in which Shri Ramachari ought to have been rightly absorbed. In fact, this union also represented to the MPT that Shri Ramachari should be appointed as a Diesel Fitter in a supernumerary post and not as a Fitter (V.B.R.). At that time the management says it was presumable because Shri Ramachari was a member of that union. It appears that he switched his allegiance to another union and therefore, the present union, sponsoring the dispute changed its stand and protested against the change of designation of Shri Ramachari. This union simultaneously protested that they were no promotional avenues for other Fitter (V.B.R.). At that time the post of Tinsmith highly skilled fell vacant and, it was, decided as a result of oral discussions and compromise with the unions that the post

of Tinsmith highly skilled would be converted into the post of Fitter (V.B.R.) highly skilled, so that other Fitter (V.S.R.) would have a promotional avenue and as consideration thereof the union had agreed orally to the redesignation of Shri Ramachari as a Diesel Fitter. It could be done after the sanction of the Central Government on or about 21st September 1987 and therefor, Shri Ramachari's re-designation action was taken by creating the supernumerary post of Diesel Fitter and abolishing supernumerary post of Fitter (V.B.R.) in or about 1986. The management, therefore, contends that this union has gone back upon its promise that the objection of said recruitment would be taken. Thus the contention of the management is that all this has been done at the initiative of the union and with its concurrence and the union is not now justified in raising this dispute.

11. Rejoinder has been filed to this written statement and the contentions raised in the written statement are denied. On behalf of the union Shri Rodrigues has been examined and cross examined. The management's witness Shri Kamath has filed an affidavit in support and it is seen that there has been no cross-examination though opportunity was given to the union to do so, inspite of the fact that the matter was closed for passing award earlier.

12. In the course of the cross examination of Shri Rodrigues he has stated that it could be that Shri Ramachari was appointed V.B.R. (Vehicle Body Repairer) on E.L.R. (Extra Labour Reggisation) in the year 1975, and that Fitter V.B.R. was a skilled grade as well as the post of Diesel Fitter and both are carrying same pay scales. He further admitted the Khalasi was an unskilled grade. It could be that M/s. Pareira, Desai, Fernandes and Sheikh Abdulla were originally appointed as Khalasi and came to be promoted as Asst. Diesel Fitters and their dates of promotion could be 4-8-1980, 9-7-1985, 12-7-1984 and 15-2-1983 respectively. M/s. Pareira, Desai and Fernandes further came to be promoted as Diesel Fitters on 7-3-1989, 14-5-1991 and 14-5-1991 respectively. Therefore, Ramachari, who was appointed as V.B.R. in the year 1975 obviously was senior to these persons in the scale to which eventually these persons came to be promoted. He has further admitted that Shri Ramachari was redesignated on 12th May 1987 with retrospective effect from 1986 much earlier than the date on which M/s. Pareira, Desai and Fernandes came to be promoted as Diesel Fitters. Shri Antonio Fernandes was promoted on Adhoc basis as Diesel Fitter on 11-7-1990 and Shri Desai on 30-7-1990. Shri Ramachari was appointed in a supernumerary post of Body Fitter as stated in 1984. He further admitted that the union did not protest against the regularisation of services of Shri Rosario and Decosta only from the supernumerary post to regular post. He further admitted that there was no protest made in the year 1984. He has also admitted that Shri Chandrakant Naik was promoted as Diesel Fitter from Asst. Diesel Fitter on 21-7-1986. He was not able to say whether Ramachari was junior to Chandrakant Naik nor if he was senior to Shri D'Mello. His grievance, he states is, that Shri Ramachari was redesignated as Diesel Fitter from Fitter V.B.R. He further admits that Shri Ramachari was not designated at any time as Asst. Diesel Fitter from Fitter V.B.R. He thereafter admitted that it was true to say that his union did not object to this redesignation except by letter dated 14-10-1986 to the Asst. Labour Commissioner. He has also admitted that two posts in Fitters Grade were created on 9-7-1985 and they were regular posts and that Rosario and D'Costa working as Diesel Fitters were adjusted on these two posts. It is further admitted that there was no promotion to the post Fitter (Diesel) from Asst. Fitter in the two vacancies. It has been further admitted that on 14-11-1987 Mr. G. Toraskar joined the post of Fitter V.B.R. highly skilled. Lastly he states that he does not know if the post of Fitter V.B.R. highly skilled was a redesignation of the post of Tinsmith highly skilled

13. I find that Shri Kamath in the course of his affidavit has set out the details of reasons that led to the redesignation of the post held by Shri Ramachari. He has not been cross-examined as stated earlier. Unchallenged evidence of Shri Kamath adduced on behalf of the management clearly establishes the case of the management and demolishes that made out by the union. It has been stated that the unions

were parties to the decisions taken and pursuant to those decisions taken the supernumary posts were created and filled up by appointing E.L.R. and abolishing them when regular vacancies arose. Shri Ramahari was one of the E.L.R. so his interest was taken care of by the union. I find that though there has been no difficulty in the unions accepting decision it has chosen to raise a dispute when it suited it and which stand was contrary to its earlier approach. I find that there is no merit in the contentions raised on behalf of the union and it is not correct to say that the action of the management of M.P.T. in changing designation was unjustified since it was not preceded by notice under section 9(A) of the Industrial Disputes Act. It is also not correct to say that the demands of the union in respect the Asstt. Diesel Fitters for promoting is justified. The workmen are not, in my opinion entitled to any relief in the facts and circumstances of this case.

Award accordingly.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली 24 मार्च, 1995

का. आ. 981—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लिमिटेड भासकोडागामा के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2 बम्बई के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-03-95 को प्राप्त हुआ था।

[संख्या एल-30012/23/89 आई आर (मिस.)]
राजालाल, डेस्क अधिकारी

New Delhi, the 24th March, 1995

S.O. 980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award of the Central Government Industrial Tribunal No. 2, Bombay, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Petroleum Corporation Ltd., Vasco-da-Gama and their workmen, which was received by the Central Government on 23rd March, 1995.

[No. L-30012/23/89-IR (Misc.)]
RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT:

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/37 of 1990

Employers in relation to the management of Bharat Petroleum Corporation Ltd., Vasco-da-Gama.

AND

Their Workmen.

APPEARANCES:

For the Employers—Shri R. N. Shah, Advocate.

For the Workmen—Shri G. D. Samant, Advocate.

Bombay, dated 7th March, 1995

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter No. L-30012/23/89-IR (Misc.) dated 8th November, 1990 referred to the following industrial dispute for adjudication. It is in the following terms:

"Whether the action of the management of M/s. Bharat Petroleum Corporation Ltd., Vasco-da-Gama, in terminating/discontinuing the services of Shri Purshottam B. Kumbhar Casual Cleaner, w.t.f. June 1988 is justified? If not, to what relief the said workman is entitled?"

2. Shri Purshottam Kumbhar claims that he was working as a Casual Worker from 1984 to June 1989 with the Opponent, and the Branch Manager abruptly terminated his services when he reported to the duty.

3. The workman contended that in March 89, he realised that the Opponent Employer was intending to fill the regular vacancy of Cleaner by resorting to fresh candidates sponsored from the Employment Exchange. He therefore raised a dispute and during that period his services were terminated. He asserted that the Office memorandum dated 7th June, 1988 reference No. F. No. 490/4/2/86-ESH(c) from the Ministry of Personnel, Public Grievances and Pensions, Government of India a policy has been laid down regarding the Employment of Casual workers in the Central Government and other Statutory Organisations. He submitted that the procedure laid down in that memo is not followed by the Opponent. He prayed that he may be reinstated in service w.e.f. date of termination of his vacancy with full back wages.

4. The Opponent opposed the claim by their written statement exh. 3. It is asserted that the alleged dispute is not an industrial dispute as contemplated under section 2(K) of the Industrial Disputes Act and under section 2(A) of the said Act. It is averred that the applicant had not worked for more than 240 days in a calendar year.

5. The workman contended that it is the policy of the Government that all recruitments under the workman category will have to be done from among the candidates sponsored by the Employment Exchange against the invited vacancies. The Applicant's name was never informed by the Employment Exchange and therefore he cannot be considered at all. It is averred that the work on a casual basis for a limited period in an organisation does not entitle any one to a permanent employment in that organisation. It is submitted that the workman was never regularly employed as a casual worker and he was not attending the gate of the Company on everyday basis. The permanent vacancy was filed up after informing the Employment Exchange at Vasco and the Employment Exchange sponsored the list of candidates who satisfy the eligibility criteria.

6. The employer contended that a wrong reference is placed by the workman on the memo dated 7th June, 1988 and that memo relates to the Central Government employees in their offices and no such direction is received in respect of the Casual workers by the Employer. It is contended that the workman is not entitled to the relief as claimed.

7. My Learner predecessor framed issues at exh. 4 for determination. The issues and my findings thereon are as follows:

Issues	Findings
1. Whether no industrial dispute as contemplated under section 2(K) of the Industrial Disputes Act, 1947 exists between the workmen and the Management in the present case?	YES
2. Whether the provisions of the section 2A of the said Act are not attracted in the present case?	YES attracted
3. Whether the action of the Management of M/s. Bharat Petroleum Corporation Ltd., Vasco-da-Gama in terminating/discontinuing the services of Shri Purshottam B. Kumbhar, Casual Cleaner, with effect from June 1988 is justified	YES
4. If not, to what relief the said workmen is entitled?	Does not survive
5. What Award?	As per order below.

REASONS

8. Shri Purshottam Kumbhar (exh. 6) admits that he was a casual worker with the Opponent. He worked there for less than 240 days in a year. He worked 55 days in 1984, 59 days in 1985, 57 days in 1986, 88 days in 1987 and 54 days in 1988. He affirmed that he did not work at all in 1989. Later on he clarified that he worked for 8-10 days in that year for which he was not paid at all. It is not in dispute that he worked when the regular employee was on leave, he was never given an appointment letter or any written order for his engagement in duty for that period and the discontinuation. This is supported by Debash Chandra Patra (exh. 9) the Deputy Manager of Bharat Petroleum Corporation Limited.

9. Section 2K of the Industrial Disputes Act deals with the definition of Industrial Dispute. "It means a dispute or a difference between employer and employee employer and employer, or between employers and the workman or workman and workman which is connected with the employment or the un-employment of the terms of employment or with the conditions of labour of any person". Looking to the nature of reference, this dispute does not fall under the said definition. It can be further seen that in the written argument filed by the workman, there is no reference relating to this issue.

10. Section 2A of the Industrial Disputes Act reads as under :

"Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not withstanding that no other workman nor any nation of workmen is a party to the dispute."

11. It is tried to argue on behalf of the management that as the workman was employed on a temporary basis, his case does not fall under the extended definition of industrial dispute. According to that he was not discharged, dismissed, retrenched, or otherwise terminated from the services. It is his services were terminated on the basis of efflux of time and not at the instance of the corporation. Shri Purshottam affirmed that he was employed temporarily as a casual worker. He was always given such an appointment when a permanent employee is absent. As he was not given such an appointment and some other person was recruited in his place he raised the industrial dispute. Admittedly, he worked between 1984 to June 1989. It is therefore very clear that the workman was not discharged, dismissed, retrenched, or terminated at any time. He was given the employment on casual basis and for a particular period, but due to efflux of time his service was over.

12. The Learned Advocate for the workman placed reliance on Oriental Bank of Commerce v/s. Presiding Officer, Central Government Industrial Tribunal And Anr, 1993, I, CLR, 205. That was a case wherein the workman was given the appointment against the leave vacancy and was for a fixed term and came to an end on the expiry of the period. While deciding the matter; it is observed by THEIR LORDSHIPS that there is no reason to give the new construction of the definition of the term retrenchment. The termination of the services of the workman amounts to retrenchment even if he has worked for less than 240 days. Under such circumstances, the personal dispute can also be said to be falling under the definition of section 2A of the Industrial Disputes Act.

13. The workman placed reliance on the circular at Exh. 5/3 After perusal of the circular it cannot be said that as if a right he is entitled to employment with the Opponent. Shri Debesh Chandra Patra affirmed that the workman could not be considered as his name was not recommended by the Employment Exchange. It is not in dispute that his name was not recommended by the Employment Exchange. It is well settled that when such an appointment is to be made the names should be asked from the concerned employment exchange. The management did not consider the case of the

workman as his name was not sponsored by the employment exchange. The Learned Advocate for the workman placed reliance on Union of India v/s. Hargopal AIR, 1987, S.C. 1217. My attention was drawn to para 6 of the said judgment wherein it is observed that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchange. It is tried to suggest that under such case, that should have led the workman to compete with the other candidates for getting the employment. The Learned Advocate for the employer had drawn my attention to para 9 of the said judgment which states that the candidates are to be filled from the names received from the employment exchange. It was only when those suitable candidates were not available the other sources of recruitment were to be considered. Here in this case as the other names were sponsored by the Employment Exchange, the name of the workman could not be considered.

14. It is tried to suggest that the workman registered his name with the employment exchange. That might be true but the fact remains that his name was not sent by the Employment Exchange to the Opponent. Therefore he was rightly not considered by the management for the employment as the other qualified candidates names were sent to them. I therefore find that the action which is taken by the management is perfectly legal and proper. It does not warrant any change.

15. Before passing the award I must mention it here that it is the grievance of the workman that even though he worked for so many days which is not disputed by the management he should have been given an opportunity to complete with the candidates whose names were sent by the employment exchange. There is no record to assert that why his name was not sent to the management by the concerned Employment Exchange. There is no record to assert whether he renewed his name in the said employment exchange at a relevant time. But I find that looking to the service he rendered to the management, if the next opportunity occurs and if the workman is found eligible in all respects, he may be considered for that post. With these abbreviations, I return my findings on the points accordingly and pass the following order :

ORDER

1. The action of the management of M/s. Bharat Petroleum Corporation Ltd, Vasco-da-Gama in terminating/discontinuing the service of Shri Purshottam B. Kumbhar, Casual Cleaner. w.e.f. June, 1988 is justified.

2. No. order as to costs.

S. B. PANSE, Presiding Officer

नई दिल्ली, 24 मार्च, 1995

का. आ. 981.—यतः मैसर्स तमिलनाडु पेट्रो-प्राइक्ट्स लि., 6, ननगमबक्कम हाई रोड, मद्रास-600034 (इसके आगे जहाँ कहीं भी उक्त स्थापना शब्द का प्रयोग हो इसमें अभिप्रायः उक्त स्थापना से है (ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम 1952) (1952 का 19) इसके आगे उक्त अधिनियम के नाम से निर्दिष्ट) को धारा 17 की उपधारा (1) के खण्ड (क) के अन्तर्गत छूट प्राप्त करने के लिए आवेदन किया है।

यह केन्द्र सरकार की राय में उक्त स्थापना के कर्मचारियों के लिए तैयार किए गए भविष्य निधि नियमों में अंशदान की दर उक्त अधिनियम की धारा 6 में उल्लिखित कर्मचारी अंशदान की दर से कम नहीं है तथा इसके कर्मचारियों को मिलने वाले भविष्य निधि उक्त अधिनियम तथा कर्मचारी भविष्य निधि स्कीम, 1952 इसके आगे जहाँ कहीं भी स्कीम शब्द का प्रयोग किया गया है उसमें अभिप्राय उक्त स्कीम से है) में उल्लिखित लाभों से किसी भी प्रकार से कम नहीं है जो इस वर्ग की स्थापनाओं में कार्यरत कर्मचारियों को उपलब्ध है।

अब इसलिए उक्त अधिनियम की धारा 17 की उपधारा एक के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और पंथन अनुसूची में वर्णित शर्तों के अधीन केन्द्रीय सरकार इसके द्वारा उक्त स्थापना को उक्त स्कीम के सभी उपबन्धों के लागू होने से छूट प्रदान करती है।

अनुसूची

1. उक्त स्थापना से संबंधित नियोक्ता केन्द्र सरकार के द्वारा समय-समय पर दिए गए निदेशों के अनुसार उक्त अधिनियम की धारा 17 की उपधारा (3) के खण्ड (क) में उल्लिखित निरीक्षण के लिए सुविधाएं प्रदान करेगा और ऐसे निरीक्षण प्रभार को अदायगी प्रत्येक माह की समाप्ति के 15 दिन के अन्दर करेगा।

2. न-छूट प्राप्त स्थापनाओं के सम्बन्ध में उक्त अधिनियम और उसके अधीन सृजित स्कीम के अन्तर्गत देय अंशदान के देर से स्थापना के भविष्य निधि नियमों के अन्तर्गत देय अंशदान का दर किसी समय भी कम न होगा।

3. पेशगियों के मामले में छूट प्राप्त स्थापना की स्कीम कर्मचारी भविष्य निधि स्कीम, 1952 से कम हितकर नहीं होगा।

4. उक्त स्कीम में कोई भी संशोधन जो स्थापना के वर्तमान नियमों से अधिक लाभकारी है उन पर अपने आप लागू किया जाएगा। उक्त स्थापना के भविष्य निधि नियमों में कोई भी संशोधन, क्षेत्रीय भविष्य निधि आयुक्त को पूर्व अनुमति के बगैर नहीं किया जाएगा और जहां किसी संशोधन से उक्त स्थापना के कर्मचारियों के हित के प्रतिकूल प्रभावी होने की सम्भावना है वहां अपनी अनुमति से पूर्व, क्षेत्रीय भविष्य निधि आयुक्त, कर्मचारियों को अपने विचार प्रस्तुत करने का उचित अवसर देगा।

5. यदि स्थापना की छूट न दी जाती तो वे सभी कर्मचारी (जैसे उक्त अधिनियम की धारा 2(च) में निश्चित किया गया है) जो सदस्य बनने के पात्र होते, सदस्य बनाए जाएंगे।

6. जहां एक कर्मचारी जो कर्मचारी भविष्य निधि (कानूनी) या किसी अन्य छूट-प्राप्त स्थापना का पहले से सदस्य है, को अपनी स्थापना में काम पर लगाया जाता है तो नियोक्ता उस निधि का तुरंत सदस्य बनाएगा और ऐसे कर्मचारी के पिछले नियोक्ता के पास भविष्य निधि लेखों में संचयों को अंतरित कराने और उसके लेखों में जमा कराने की व्यवस्था करेगा।

7. केन्द्रीय भविष्य निधि आयुक्त के द्वारा अथवा केन्द्रीय सरकार के द्वारा जैसे भी मामला हो, समय-समय पर दिए गए निदेशों के अनुसार भविष्य निधि के प्रबन्ध के लिए नियोक्ता न्यासी बोर्ड की स्थापना करेगा।

8. भविष्य निधि, न्यासी बोर्ड में निहित होगा जो अन्य बातों के होने हुए भविष्य निधि में आय के उचित लेखों

और भविष्य निधि से अदायगियों और उनकी अभिरक्षा में शेषों के लिए कर्मचारी भविष्य निधि संगठन के उत्तरदायी होगा।

9. तथा 10. न्यासी बोर्ड कम से कम 3 माह में एक बार बैठक करेगा और केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त या उसके द्वारा अधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए गए मार्ग निर्देशों के अनुसार कार्य करेंगे/न्यासी बोर्डों द्वारा रखे गए भविष्य निधि लेखों की लेखा परीक्षा वार्षिक रूप से योग्य मनदी लेखापाल द्वारा स्वतन्त्र रूप में की जाएगी/जहां भी आवश्यक होगा केन्द्रीय भविष्य निधि आयुक्त को अधिकार होगा कि वह किसी अन्य योग्य लेखा परीक्षक से खातों के द्वारा लेखा-परीक्षा कराए और ऐसे पुनः लेखा-परीक्षा के खर्च नियोक्ता वहन करेगा।

11. प्रत्येक वर्ष स्थापना के लेखा परीक्षित तुल्य-पत्र के साथ लेखा परीक्षित वार्षिक भविष्य निधि लेखों की एक प्रति वित्तीय वर्ष की समाप्ति के छः माह के अन्दर क्षेत्रीय भविष्य निधि आयुक्त को प्रस्तुत की जाएगी। इस प्रयोजन के लिए भविष्य निधि का वित्तीय वर्ष पहली अप्रैल से 31 मार्च तक होगा।

12. नियोक्ता प्रतिमाह भविष्य निधि के देय अपने कर्मचारियों के अंशदानों को आगामी माह की 15 तारीख तक न्यासी बोर्ड को अंतरित कर देगा। अंशदानों की विलम्ब से अदायगी करने के लिए समान परिस्थितियों में नियोक्ता नुकसानी देने का उमी प्रकार उत्तरदायी होगा जिस प्रकार एक नवछूट प्राप्त स्थापना उत्तरदायी होती है।

13. न्यासी बोर्ड सरकार द्वारा समय-समय दिए गए निदेशों के अनुसार निधि में जमा गणितों का निवेश करेगा। प्रतिभितियां न्यासी बोर्ड के नाम पर प्राप्त की जाएंगी और भारतीय रिजर्व बैंक के जमा नियंत्रण में अनुसूचित बैंक की अभिरक्षा में रखा जाएगा।

14. सरकार के निदेशों के अनुसार निवेश करने पर न्यासी बोर्ड अलग-अलग रूप से और एक साथ केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधियों द्वारा लगाए गए अधिक प्रभार का उत्तरदायी होगा।

15. न्यासी बोर्ड एक वस्तु-व्यय रजिस्टर तैयार करेगा और व्याज और विमोचन आय की समय पर वसूली सुनिश्चित करेगा।

16. जमा किए गए अंशदानों, निकाले गए और प्रत्येक कर्मचारी से संबंधित व्याज को दिखाने के लिए न्यासी बोर्ड विस्तृत लेख तैयार करेगा।

17. वित्तीय/लेखा वर्ष की समाप्ति के छः माह के अन्दर बोर्ड प्रत्येक कर्मचारी को वार्षिक लेखा विवरण जारी करेगा।

18. बोर्ड प्रत्येक कर्मचारी को वार्षिक लेखा विवरण के स्थान पर पामबुक जारी कर सकता है। ये पाम-बुके कर्मचारियों की अभिरक्षा में रहेंगी और कर्मचारियों के प्रस्तुतीकरण पर बोर्ड के द्वारा इन्हें अद्यतन किया जाएगा।

19. लेखा वर्ष के पहले दिन आदि शेष पर प्रत्येक कर्मचारी के लेखे में ब्याज उस दर से जमा किया जाएगा जिसका न्यासी बोर्ड निर्णय करें परन्तु यह उक्त स्कीम के पैरा 60 के अन्तर्गत केन्द्रीय सरकार द्वारा घोषित दर से कम नहीं होगा।

20. यदि न्यासी बोर्ड केन्द्रीय सरकार द्वारा घोषित ब्याज की दर इस कारण से कि निवेश पर आय कम है या किसी अन्य कारण से श्रदा करने में असमर्थ है तो इस कमी को नियोक्ता पूरा करेगा।

21. नियोक्ता भविष्य निधि की चोरी के कारण लूट-खसूट, खानत, गबन अथवा किसी अन्य कारण से हुई हानि को पूरा करेगा।

22. नियोक्ता और न्यासी बोर्ड, क्षेत्रीय भविष्य निधि आयुक्त को ऐसी विवरणियाँ प्रस्तुत करेगा जो समय-समय पर केन्द्रीय सरकार/केन्द्रीय भविष्य निधि आयुक्त निर्धारित करें।

23. उक्त स्कीम के पैरा 69 की शैली पर किसी कर्मचारी को निधि के सदस्य न रहने पर यदि स्थापना के भविष्य निधि नियमों में नियोक्ताओं के अंशदानों को जम्मा करने की व्यवस्था है तो न्यासी बोर्ड इस प्रकार जम्मा की गई राशियों का अलग से लेखा तैयार करेगा और उसे प्रयोजनों के लिए उपयोग करेगा जो केन्द्रीय भविष्य निधि आयुक्त की पूर्व अनुमति से सुनिश्चित किया गया हो।

24. स्थापना के भ. नि. नियमों में किसी बात के होते हुए भी सेवानिवृत्त होने अथवा किसी अन्य स्थापना में रोजगार लगने के परिणामस्वरूप किसी व्यक्ति के निधि की सदस्यता न रहने पर यदि यह देखने में आता है कि स्थापना के भ. नि. नियमों के अन्तर्गत अंशदान की दर, जन्मी आदि की दर, मासिक स्कीम की दरों की तुलना में कम अनुकूल है तो उस का अंतर नियोक्ता द्वारा दिया जाएगा।

25. नियोक्ता, भविष्य निधि के प्रणामन से सम्बन्धित सभी खर्च जिसमें लेखों के रखरखाव, रिटर्न प्रस्तुत किए जाने, राशियों का अन्तरण शामिल है, वहन करेगा।

26. नियोक्ता समुचित प्राधिकारी द्वारा अनुमोदित निधि के नियमों की एक प्रति तथा जब भी कोई संशोधन होता है, उसकी मुख्य बातों को कर्मचारियों के बहुमत की भाषा में अनुवाद करके स्थापना के बोर्ड पर लगाएगा।

27. "समुचित सरकार" स्थापना की चालू छूट पर और शर्तें लगा सकती हैं।

28. यदि उक्त अधिनियम के अन्तर्गत स्थापना वर्ग जिसमें उसकी स्थापना आती है, पर अंशदान की दर बढ़ायी

जाती है, नियोक्ता भविष्य निधि अंशदान की दर उचित रूप में बढ़ाएगा, ताकि उक्त अधिनियम के अन्तर्गत दिए जाने वाले सभी लाभों से स्थापना को स्कीम के अन्तर्गत दिए जाने वाले भविष्य निधि के लाभ किसी भी प्रकार से कम न हों।

29. उक्त शर्तों में से किसी एक से उल्लंघन पर छूट रद्द की जा सकती है।

[सं. एस-35015/7/95—एस. एस.-II]

जे. पी. शुक्ला, अवसर सचिव

New Delhi, the 24th March, 1995

S.O. 981.—Whereas Messrs. Tamil Nadu Petro-Products Ltd., 6, Nungambakkam High Road, Madras-600034 (hereinafter referred to as the said establishment) has applied for exemption under clause (a) of sub-section (1) of Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the said Act).

And, whereas, in the opinion of the Central Government the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the said Scheme) in relation to the employees in any other establishment of similar character;

Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of Section 17 of the said Act and subject to the conditions specified in the Schedule annexed hereto the Central Government hereby exempts the said establishment from the operation of all the provisions of the said Scheme.

SCHEDULE

1. The employer in relation to the said establishment shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of section 17 of the said Act within 15 days from the close of every month.

2. The rate of contribution payable under the provident fund rules of the establishment shall at no time be lower than those payable under the said Act in respect of the un-exempted establishments and the said Scheme framed thereunder.

3. In the matter of advances, the scheme of the exempted establishment shall not be less favourable than the Employees Provident Fund Scheme, 1952.

4. Any amendment to the said Scheme which is more beneficial to the employees than the existing rules of the establishment shall be made applicable to them automatically. The employer shall not however make any other amendment in its P.F. rules without the approval of Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval, give a reasonable opportunity to the employees to explain their points of view.

5. All employees as defined in section 2(f) of the said Act who would have been eligible to become members of the Provident Fund had the establishment not been granted exemption shall be enrolled as members.

6. Where an employee who is already a member of the Employees' Provident Fund (Statutory) or a provident fund of any other exempted establishment is employed in his estab-

ishment, the employer shall immediately enrol him as a member of the fund and arrange to have the accumulations in the provident fund account of such employee with his previous employer transferred and credited to his account.

7. The employer shall establish a Board of Trustees for the management of the provident fund according to such directions as may be given by the Central Provident Fund Commissioner or by the Central Government, as the case may be, from time to time.

8. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees Provident Fund Organisation inter-alia for proper accounts of the receipts into and payments from the provident fund and the balances in their custody.

9. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Fund Commissioner or and officer authorised by him.

10. The accounts of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent Chartered Accountant annually. Where considered necessary, the Central Provident Fund Commissioner shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

11. A copy to the audited annual provident fund accounts together with the audited balance sheet of the establishment for each accounting year shall be submitted to the Regional Provident Fund Commissioner within six months after the close of the financial year. For this purpose the financial year of the provident fund shall be from the 1st of April to the 31st of March.

12. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest for any delay in payment of the establishment is liable in similar circumstances.

13. The Board of Trustees shall invest the monies in the fund as per directions that may be given by the Government from time to time. The securities shall be obtained in the name of the Board of Trustees and shall be kept in the custody of a scheduled Bank under the Credit Control of the Reserve Bank of India.

14. Failure to make investments as per directions of the Government shall make the Board of Trustees severally and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

15. The Board of Trustees shall maintain a scriptwise register and ensure timely realisation of interest.

16. The Board of Trustees shall maintain detailed accounts to show the contributions credited, withdrawal and interest in respect of each employee.

17. The Board shall issue an annual statement of accounts to every employee within six months of the close of financial/ accounting year.

18. The Board may, instead of the annual statement of accounts, issue pass books to every employees. Those pass book shall remain in the custody of the employees and will be brought uptodate by the Board on presentation by the employees.

19. The accounts of each employee shall be credited with interest calculated on the opening balance as on the 1st day of the accounting year at such rate as may be decided by the Board of Trustees but shall not be lower than the rate declared by the Central Government under para 60 of the said Scheme.

20. If the Board of Trustees are unable to pay interest at the rate declared by the Central Government for the reason that the return on investment is less or for any other reason than the deficiency shall be made good by the employer.

21. The employer shall also make good any other loss that may be cause to the Provident Fund due to theft burglary defalcation mis-appropriation or any other reason.

22. The employer as well as the Board of Trustees shall submit such returns to the Regional Provident Fund Commissioner as the Central Government/Central Provident Fund Commissioner may prescribed from time to time.

23. If the Provident Fund rules of the establishment provide for forfeiture of the employees' contribution in cases where an employees ceases to be a member of the fund on the lines of para 69 of the said Scheme, the Board of Trustees shall maintain a separate account of the amount so forfeited prior to 1-1-90 utilise by the B-O-T for such purposes as may be determined with the prior approval of the Central Provident Fund Commissioner.

24. Notwithstanding anything contained in the Provident Fund Rules of the establishment, if on the cessation of any individual from the membership of the fund consequent on retiring from service or on taking up the employment in some other establishment, it is found that the rate or contribution rate of forfeiture etc., under the P.F. Rules of the establishment are less favourable as compared to these under the statutory Scheme, the difference shall be borne by the employer.

25. The employer shall bear all the expenses of the administration of the provident fund including the maintenance of accounts, submission of returns, transfer of accumulations.

26. Notwithstanding anything contained in the Provident establishment, a copy of the rules of the fund as approved by the appropriate authority and as and when amended there to alongwith a translation of the salient points thereof in the language of the majority of the employees.

27. The appropriate Government may lay down any further conditions for continued exemption of the establishment.

28. The employee shall enhance the rate of provident fund contributions appropriately if the rate of provident fund contribution is enhanced under the said Act so that the benefits under the Provident Fund Scheme of the establishment shall not become less favourable than the benefits provided under the said Act.

29. The exemption is liable to be cancelled for violation of any of the above conditions.

[No. S-35015/7/95-SS II]

I. P. SHUKLA, Under Secy.

नई दिल्ली, 27 मार्च, 1995

का. आ. 982.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डीविजनल इंजीनियर (फोर्स) फोर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-8-95 को प्राप्त हुआ था।

[संख्या एल-40012/26/87-डी-II (बी)]

के. वी. बी. उन्नी, डैस्क अधिकारी

New Delhi, the 27th March, 1995

S.O. 982.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Jabalpur as shown in the Annexure, in the Industrial dispute between the employers in relation to

the management of Divisional Engineer (Phones), Phones Division and their workmen, which was received by the Central Government on 21-3-95.

[No. L-40012/26/87-D.II(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR (MP)

Case Ref. No. CGIT/LC(R)(53)/1988

BETWEEN

Miss Sunanda Kamble (now Mrs. Sunanda Sukhdeve)
C/o. M. S. Kamble, 4/23, South T. T. Nagar,
Bhopal (MP).

AND

The Divisional Engineer (Phones), Phones Division,
Bhopal (MP) and The Director, Telecommunication,
M.P. Circle, Bhopal (MP).

PRESIDED IN : By Shri Arvind Kumar Awasthy.

APPEARANCES :

For Workman—Shri A. K. Shasi, Advocate.

For Management—Shri B. Da'Silva, Advocate.

INDUSTRY : Telecom. DISTRICT : Bhopal (MP).

AWARD

DATED : MARCH 1995

This is a reference made by the Central Government, Ministry of Labour, vide its Notification No. L-40012/26/87-D-II(B) Dated 3rd June, 1988, for adjudication of the following industrial dispute :—

SCHEDULE

"Whether the action of the Divisional Engineer (Phones), Phones Division, Bhopal in terminating Miss Sunanda Kamble (now Mrs. Sunanda Sukhdeve), Telephone Operator from service with effect from 19-5-1983 is legal/justified? If, not to what relief the workman concerned is entitled and from what date?"

2. Admitted facts of the case are that Miss Sunanda Kamble was appointed as a Telephone Operator in the pay scale of Rs. 260-480 with effect from 15-6-82 vide order dated 24th February, 1983 and subsequent to her marriage she is now known as Mrs. Sunanda Sukhdeve; that in the order of appointment it was mentioned that the post is temporary; that it is also not in dispute that Mrs. Sunanda Sukhdeve was on medical leave during the period from 20-2-1983 to 5-6-1983.

3. The case of the workman is that the service of the workman was terminated by order dated 19-5-83; that the management has treated absence of the workman as her resignation with effect from 19-5-83 which was illegal. The workman has prayed that her termination with effect from 19-5-83 be declared illegal and she be treated in continuous employment and all the benefits be given to her.

4. The case of the management is that Smt. Sananda Sukhdeve was temporary employed; that as per CCS (Temporary Services) Rules the absence of the temporary employee for a period of three months is to be given sufficient ground for termination of the service. It is alleged by the management that from 11-6-83 the workman was absent from the duty for more than three months and as per rules it was treated that she resigned from service from 19-5-83. It is alleged that the workman was reinstated vide order dated 28-9-87. The management has denied that the termination of the service of the workman was malicious and it is alleged that on account of the continuous long absence from the duty the services of this temporary employee was terminated.

5. From the order of appointment it is clear that Mrs. Sunanda Sukhdeve was appointed temporarily; that she was continuously absent from 20-5-83 to 5-6-83 and also

from 20-2-83 to 19-5-83. No explanation is given by the workman for her continuous absence. Consequently, as per C.C.S.L Leave Rules 32(A) & (B) she was not entitled for the leave even on medical ground and her services were terminated under C.C.S. (Temporary Services) Rules.

6. Consequently, the action of the management in terminating the services of the workman w.e.f. 19-5-1983 is legal and justified. She is not entitled to any relief. Parties to bear their own costs.

ARVIND KUMAR AWASTHY, Presiding Officer.

नई दिल्ली, 27 मार्च, 1995

का. आ. 983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम टी एन एल के प्रबन्धतंत्र के संबद्ध, नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 2 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-3-95 को प्राप्त हुआ था।

[संख्या एल-40011/14/90-आई आर (डी यू)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 27th March, 1995

S.O. 983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal Bombay No. 2, as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of MTNL and their workmen, which was received by the Central Government on 21-3-95.

[No. L-40011/14/90-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri S. B. Panse, Presiding Officer

Reference No. CGIT-2/6 of 1991

Employers in relation to the Management of Mahanagar Telephone Nigam Limited, Bombay

AND

Their Workmen

APPEARANCES :

For the Employers.—Mr. R. S. Bhavanani Representative.

For the Workmen.—Mr. P. M. Devadiga Representative.

Bombay, dated 1st March, 1995

AWARD

The Government of India, Ministry of Labour, New Delhi by its letter No. L-40011/14/90-IR(DU) dated 4-2-91 has referred to the following industrial dispute for adjudication.

SCHEDULE

"Whether the action of the management of Mahanagar Telephone Nigam Limited in terminating the services of 14 workmen (as per Annexure 'A') working in the Telephone House Canteen, Telephone

House of MTNL, Bombay w.e.f. 7-10-88 and whether the management of MTNL were also justified in withholding wage from Aug. 1988 and in non-implementation of Fourth Pay Commission's pay scale w.e.f. 1-1-1986? If not, to what relief the concerned workmen are entitled to?"

2. The 14 workers claim to be the employees of the Mahanagar Telephone Nigam Limited in the canteen situate at Pralhadaji Administrative Building, Bombay. They contended that as they were denied the equal wages and benefits as applicable to the direct employees of the Bombay Telephones as it was then they started demanding it. The management with a view to publish the workers stopped their work w.e.f. 7-10-1988.

3. The Mahanagar Telephone Nigam Limited has various telephone exchanges throughout Bombay and Thane. Many employees are working in those establishments. On the basis of the strength of the employees in those establishments are classified into category A, B and so forth. On the basis of the category of the canteen employees are provided in every such canteen. It is always seen that the strength of the workmen in the canteen is always less. It is therefore the workmen in the present dispute would have been absorbed in the other canteens of the management.

4. The workman contended that in view of the various judgements and directions of the Supreme Court the Canteen should be given on contract basis to private contractors but the department itself should run the canteen workmen employed therein are the direct employees of the Union of India. Under such circumstance, the plea of the management that the private contractors express their inability to run the canteen in question cannot be accepted and the stoppage of work w.e.f. 7-10-88 is illegal.

5. The workmen asserted that before taking the impugned action, no notice was given to the workers and nor the

requisite conditions for retrenching the workers were complied by the management.

6. The workmen contended that under such circumstance, the action of the management is unjustified. The workmen are entitled to reinstatement with full back wages and continuity in service with other reliefs. They also claim that they are entitled to the Fourth Pay Commission recommendations which recommendations have been accepted and directed to be implemented by the Directorate of Canteens, Union of India, to the employees of the canteen.

7. The management resisted the claim by their written statement exh. 5. They contended that the 14 workers in the present reference are not the employees of the management at any time. Under such circumstances, the principles of equal wages of the said workmen with the employee of the Bombay Telephones does not arise at all. It is asserted that there is no relationship of Master and Servant or employer and employee between the management and the said 14 workers. It is averred that the 14 workers were never appointed by the management in their employment. Under such circumstance, the implementation of the Fourth Pay Commission does not arise. In fact, no industrial dispute exists between the management and those 14 workers.

8. The management asserted that it is wrong to say that the Canteen should not be given on contract basis to the private contractors as alleged. It is asserted that the workers were appointed by the private contractors and his contract was terminated. It is pleaded that the Canteen in Telephone House was run through Contractors namely Divya Caterers in or about October 1991. Prior to him it was run through Shri S. K. Shetty of Ambica Annapurneshwari Caterers, Bandra (East), Bombay. Under such circumstance, it is submitted that the claim of the workman has to be rejected.

9. My Learned Predecessor framed issues at exh. 6, on 30-1-92. The issues and my findings thereon are as follows:

Issues	Findings
1. Whether the 14 Workmen in question were the employees of the Mahanagar Telephone Nigam Ltd.,	NO
2. Whether no industrial dispute as contemplated under the Industrial Disputes Act existed between the workmen in question and the management in question?	No industrial dispute exists.
3(a) Whether the action of the management of Mahanagar Telephone Nigam Ltd. in terminating the services of 14 workmen (as per Annexure 'A', working in the Telephone House Canteen, Telephone House of MTNL Bombay w.e.f. 7-10-88 is justified?	YES.
3(b) Whether the action of the management of Mahanagar Telephone Nigam Ltd. were also justified in withholding wages from August, 1988.	Does not survive
3. (c) Whether the action of the management of Mahanagar Telephone Nigam Ltd. in non-implementation of Fourth Pay Commission's pay scale w.e.f. 1-1-86 is justified?	Does not survive
4. (a) If not, to what relief the concerned workmen are entitled to?	Does not survive.
4. (b) If not, to what relief the concerned workmen are entitled to?	Does not survive.
4. (c) If not, to what relief the concerned workmen are entitled to?	Does not survive.
5. What Award?	As per order below.

REASONS

10. Shri Sambhaji Ganpat Yesane (exh. 9) and Shri I. B. Dalvi (exh. 10) are the two workers among the 14 workers who represent the claim of all. They admitted that they have no appointment letter from Mahanagar Telephone Nigam Limited. There is also no dispute that they do not have any salary certificate showing the payment was made by the Mahanagar Telephone Nigam Limited. Shri Dalvi affirmed that those 14 workers were appointed by the Mahanagar Telephone Nigam Limited orally. It cannot be accepted as Mahanagar Telephone Nigam Limited is a Government institution. Every appointment in such a concern is by appointment letter. The other witness Yesane does not know whether those 14 workers were engaged by Shri S. K. Shetty or by anybody else who were the contractors. In other words, there is no documentary evidence to show that these workers were employed by the Mahanagar Telephone Nigam Limited.

Even though, there is assertion by Yesane and Dalvi that the salaries were paid by the Mahanagar Telephone Nigam Limited, no documentary evidence is adduced on the record. It can be further seen that there is no whisper by these two witnesses that the Mahanagar Telephone Nigam Limited has record to show that their salaries were paid by the Mahanagar Telephone Nigam Limited. Under such circumstance the contention raised by the management has to be accepted that these workers were employed by the Contractor to whom the canteen was given to manage.

12. The representative of the workman mainly placed reliance on the certificates (exh. 7/6 to 17) issued by Shri S. George (exh. 11) the Secretary of the Canteen at a relevant time. In these certificates it is mentioned that "This is to certify that— is working with the Bombay Telephone Canteen since two years. He is a hard worker, his character and conduct are good. We wish him all success." On its basis it is tried to argue that these workers were in the employment of the Mahanagar Telephone Nigam Limited.

13. Mr. S. George (exh. 11) who was the secretary of the Canteen at that time affirmed that he had no powers to issue such a certificate. He issued the certificate with an intention that the workers in future should be in a position to get a better employment. He further affirmed that he was served with the notice by the management (exh. 8/3) for issuance of such a certificate for which he replied (exh. 8/4). Later on the management warned him for issuing such a certificate (exh. 8/5). It is tried to suggest on behalf of the workers that this correspondence was done to the management with an intention to deprive the claims of the workmen. I do not find any justification in the same. The reason is that the secretary cannot have any authority for issuing such a certificate. The circumstances speak that these workers were not in the employment of Mahanagar Telephone Nigam Limited and as such the certificates which are issued by George were only with an intention that they should be able to get better employment in future. It cannot be said on the basis of those certificates that they were in their employment. It can be further seen that the duties of the secretary in Telephone House are nowhere prescribed that he is entitled to give such a certificate. This is also an additional circumstance to support the case of the management and the action taken against him for issuing such a certificate.

14. It is the case of the management that the Canteen was given to Mr. Subhash Bhoir who was a Contractor by an agreement (exh. 8/1). After going through the terms of the agreement it says :—

"This is to inform you that you have been temporarily permitted to run the Canteen in Prabhadevi Admn. Bldg. at your own cost and risk i.e. with your own funds, vessels, staff, raw materials and any other suitable things whatever necessary strictly on the following conditions".

This clearly goes to show that the Contractor was to appoint staff, bring raw materials, vessels and prepare food required by the employees. He was to use his funds for such purposes. It may be further seen that the conditions which are given below that agreement clearly speak that the employees were engaged by the contractor and not by the Mahanagar Telephone Nigam Limited. The condition 8 suggests that any injury caused to any member or staff i.e. the staff or the contractor will be attended at your cost i.e. the cost of the Contractor. If the position would have been different namely those workers would have been the employees of the Mahanagar Telephone Nigam Limited then the responsibility would have of Mahanagar Telephone Nigam Limited. As this is not so, these workers cannot be said to be in the service of Mahanagar Telephone Nigam Limited.

15. The representative of the workmen placed reliance on Contract Laghu Udyog Kamgar Union v/s. K. K. Desai & Ors. 1971, 1 CLR 537. The facts of that case are quite different then the facts before me. From the testimony of witnesses it clearly reveals that these workers were employed by the contractor and they were not in the employment of the Mahanagar Telephone Nigam Limited. Their salaries were paid by the Contractor, the amount required for running the canteen was of the contractor. It is therefore the ratio given in this authority is not applicable.

16. The representative of the union also placed reliance on Chandran Nair & Ors. V/s. Indo French Times Industries Ltd. & Ors. 1992, 1 S.L.R. 235. That was also a case wherein the circumstances were of such a nature proving that all those workers were paid by the management and that they were controlled by them. Therefore they were held to be the employees of the said concern. The facts of this case are quite different from the facts before me.

17. The representative of the union also placed reliance on Mohanlal v/s. Bharat Electronics Limited 1981, II, L.J. 70. That was a case where the management did not comply with section 25F of the Industrial Disputes Act. Here I have come to the conclusion that these workers were not in the employment of the Mahanagar Telephone Nigam Limited and therefore there is no question of complying with section 25F of the Industrial Disputes Act. The ratio in this authority has no application. So is the case of the other authorities namely Pratap Kumar Patnaik v/s. the Managing Director, 1991 LAB, I.C., 94.

18. As I have come to the conclusion that the workmen are not in the employment of the Mahanagar Telephone Nigam Limited, there is no question of their withholding the pay of the Fourth Pay Commission. If the payment was to be made, it was to be made by the contractor and not by the Mahanagar Telephone Nigam Limited.

19. For all these reasons, I record my findings on the points accordingly and come to the conclusion that the 14 workers in question are not in the employment of the Mahanagar Telephone Nigam Limited and as such the Industrial Dispute does not exist between the workers and the Mahanagar Telephone Nigam Limited. In the result I pass the following order :—

ORDER

1. The action of the management of the Mahanagar Telephone Limited in terminating the services of 14 workers (as per annexure 'A') working in the Telephone House Canteen, Telephone House of MTNI, Bombay w.e.f. 7-10-88 and withholding the wage from August 1988 and in non-implementation of the Fourth Pay Commissions pay scale w.e.f. 1-1-86 is justified.

2. No order as to costs.

S. B. PANSE, Presiding Officer.

